PROCEEDINGS

OF THE

INDIGNATION MEETING

HELD IN

FANEUIL HALL,

THURSDAY EVENING, AUGUST 1, 1878,

TO PROTEST AGAINST THE INJURY DONE TO THE FREEDOM OF THE PRESS BY THE CONVICTION AND IMPRISONMENT OF

EZRA H. HEYWOOD.

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties." — JOHN MILTON.

BOSTON, MASS.:
BENJ. R. TUCKER, PUBLISHER.
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REPORT OF PROCEEDINGS

AT THE

FANEUIL HALL MEETING.

ON Tuesday, June 25, 1878, EZRA H. HEYWOOD, of Princeton, Massachusetts, was sentenced, in the United States Circuit Court, to two years' imprisonment at hard labor in Dedham Jail, and to pay a fine of one hundred dollars, the charge against him being that he had circulated through the mail an obscene pamphlet called "Cupid's Yokes." Shortly after his sentence, at one of the Sunday morning conferences which are regularly held at Investigator Hall, Boston, a committee was appointed to make arrangements for holding an indignation meeting. The committee consisted of Henry Damon, A. R. Spinney, Rev. J. M. L. Babcock, Laura Kendrick, J. P. Mendum, and Benj. R. Tucker. A petition was immediately put in circulation by this committee, asking the Boston Aldermen for the use of Faneuil Hall. It received the signatures of prominent and influential citizens, and was readily granted. Accordingly, a call was issued, inviting "all friends of free speech, irrespective of sect or party, to be present at a meeting to be held in Faneuil Hall, on Thursday evening, August 1 (the anniversary of the emancipation of the slaves in the West Indies), at 7½ o'clock, to protest against the injury done to the freedom of the press by the recent conviction, sentence, and imprisonment of Ezra H. Heywood." The meeting was held at the appointed time, and very largely attended. The audience was intelligent, quiet, orderly, attentive, enthusiastic, and almost unanimous

in approval of the object of the meeting. Four thousand five hundred persons were in the hall at once, and it is estimated that six thousand visited it in the course of the evening. Though it was a standing audience, the larger portion of it was held until quarter to eleven.

The meeting was called to order by Benj. R. Tucker, who read the following list of officers selected by the committee of arrangements to conduct the meeting: —

President. — The Hon. ELIZUR WRIGHT.

Vice-Presidents. — The Hon. BENJAMIN P. WARE of Marblehead, CHARLES MCLEAN of Boston, ELIZABETH M. F. DENTON of Wellesley, HENRY N. STONE of Boston, the Hon. THOMAS ROBINSON of Pawtucket, R. I., JOSIAH P. MENDUM of Melrose, E. M. CHAMBERLIN of Boston, Mrs. M. S. WETMORE of Charlestown, D. B. MOREY, WILLIAM FOSTER, Jr., of Providence, R. I., HORACE SEAVER of Boston, JAMES CAMPBELL, ALBERT P. WARE of Andover, A. R. SPINNEY of Chelsea, ALBERT KENDRICK of Boston, L. K. JOSLIN of Providence, R. I., J. Q. A. CLIFTON of Boston, HENRY APPLETON of Providence, R. I., ALDEN SAMPSON of Charlestown, GEORGE A. BACON, J. A. J. WILCOX of Chelsea, C. W. MCLELLAN of Boston.

Secretaries. — Mrs. MATTIE SAWYER, BENJAMIN R. TUCKER.

The presiding officer of the evening was then introduced, who spoke as follows: —

FRIENDS AND FELLOW-CITIZENS:

Being unexpectedly asked to preside at this meeting, — for I was never so honored before, — I ask your kind indulgence towards a few remarks on the matter that will be brought before you by speakers who will command your attention, as I cannot, by their eloquence. "Know thyself," said a Grecian sage; and he was recommending the most valuable kind of knowledge. It is good for the human race collectively as well as individually. Human society is not yet as happy as it might be, on account of the imperfection of its self-knowledge. It does not know its own goodness, or the origin of it. It has no faith in its own virtue and honor. It seems to think that, if it did not make statutes compelling every man and woman to be good under pains and penalties, everybody would be bad. It seems to think that, if it only had statute law enough and severe enough, everybody would be wise and virtuous, and vice and crime would cease. Well, why not? Make it impossible to be wicked, and shall we not all be righteous? Of course

we shall be — after a sort. So abolish down-hill, and there will be no up-hill. With repressive law enough, thoroughly enforced, society will be perfectly innocent and quite flat.

But how can involuntary virtue be its own reward? One hundred and two years ago a heavy blow was delivered in the face and eyes of this notion that virtue is to be manufactured by law; that total depravity is the raw material out of which all that is good in the world is made by the joint government of priests and kings. It was the Declaration of American Independence. This remarkable document presupposes that virtue, honor, conscience, religion, are indigenous in the human race. In itself, and as interpreted by the Constitution of the United States, it restricts law to the defence of human rights, leaving all theoretical rights of superhuman beings to their own care, thus striking off at one blow all the old fetters of the soul, rusty with age and smeared with blood. The world — I mean the old one — stood aghast. It looked to see American society swallowed up in an ocean of vice, corruption, and crime. Now, for rather more than half of the one hundred and two years of this audacious experiment I have watched society to see the effect upon it of leaving speech, printing, and all sorts of opinion free, so far as they have been left free; have watched and compared it with the past and with the other side of the Atlantic: and I say to you I have seen society as a whole growing cleaner, sweeter, wiser, purer, nobler, happier, every year I have lived, and it is here now far better than what I saw on the other side of the Atlantic. Too well I know there are deplorable rottenness and falsehood, and too much of them in regard to the vital and naturally holy relation of the sexes, by which society perpetuates itself, and by the refinement of which it rises above the level of the brute beasts. But I do not believe the disease is growing worse, or that it affects the great body of the people, or that it can be in the least degree diminished by visiting with pains and penalties either the scientific or religious opinions that may be supposed to engender it. That the newspapers are now, every day, filled, as never before, with crimes, scandals, rascally failures and fast life, luxury, extravagance, and folly, is no proof that people are growing worse. These, like all abnormal things, are news; and it is to be noticed that any newspaper now collects news from an area at least one hundred times greater than it could fifty years ago. Hence, supposing the crimes and scandals in a given population to be only half as rife as they were then, by the newspapers they would seem to be fifty times more so. Still, better and better as society grows, its sexual vices are too bad, to be sure.

Read Rabelais, Bonris, and the Bible, and you will see it was always so, in spite of plenty of both ecclesiastical and civil law. It is not more statute law prescribing the relation of the sexes that society wants, but more knowledge of natural law, more self-knowledge, more knowledge of causes, consequences, moral and physical effects. With better opportunity to gain such knowledge in due season and from pure sources, the conservatism of innocence and the increase of virtue are possible, nay probable, nay almost as sure as sunrise. Nobody here doubts that there is such a thing as obscenity in literature and art, and that it is a bad thing. Unhappily, it is very difficult to define it, or to prosecute it without increasing its mischief. But, happily, the sway of public taste is such that it is rather clandestine in our cities, quite so in the country. It takes detectives to find it in either. The States have had laws against it coming down from the days when it was less clandestine than now. They are severe enough, but have no more succeeded in suppressing it than in suppressing the obscene people who patronize it. It is quite another sort of force which has driven it into obscurity. But nobody comes here to complain of that law, or to justify that literature. Nobody would have come here, if loose and careless Federal legislation had not been used to prosecute, proscribe, and punish honest freedom of opinion. Nobody here, I think, would object to a law regulating the transmission of literature through the mails, if it could so define obscenity as not to exclude a great part of our most valuable literature, including the Bible, and so as not to violate the true and constitutional liberty of the press. This is truly a difficult problem; and more than one able legist, without despairing of the cause of good morals, has shrunk from it in despair. But when a detective, employed by a bigoted and aggressive religious sect, traps into the mail by a lie (yes, by a lie; as if lying was not a more dangerous vice than indelicacy) a book openly sold, earnestly discussing the most vital question of society, with no word more indecent than can be found in the most revered works in our libraries, and with no opinions even more heterodox or erroneous, if you please, than can be found in the writings of John Milton, and, the Supreme Court of the United States having pronounced the law constitutional, a Circuit Court sentences the author of that book to two years of imprisonment, Faneuil Hall would cease to be Faneuil Hall, if its four walls did not become phonographs of indignation till this wrong application of the law is righted. Why, admitting the law to be constitutional and the sentence according to law, there is no such thing as the liberty of the press, and without it the Constitution of

the United States and the Declaration of Independence are not worth two brass buttons. Fellow-citizens, whatever the Supreme Court of the United States may have decided in some other case, a law which would justify the arrest by Anthony Comstock and the subsequent sentence of Heywood proves itself not only unconstitutional, but contrary to the higher law, as laid down in a book which the supporters of Comstock profess to reverence without seeming to be familiar with it. You will read in the twenty-ninth chapter of Isaiah, in the prophet's rejoicing over the downfall of evil-doers, these significant words: "And all that watch for iniquity are cut off; that make a man an offender for a word, and lay a snare for him that reproveth in the gate, and turn aside the just for a thing of nought." The simple and whole truth is that Mr. Heywood was openly "reproving in the gate" by the circulation of two works, one on human physiology and one on marriage, neither of them any more open to the charge of obscenity than any work must be which thoroughly discusses those subjects. One of them was written by himself, and contains opinions which, though by no means new or very rare, do not accord with those professed by the people who employ Mr. Comstock. If they had, all the words being the same, the charge of obscenity would never have been thought of. It was easy enough to obtain the books and prosecute under the Massachusetts law, — a law which makes the possession of an obscene book as criminal as its publication, and which, if Mr. Heywood's book is obscene, would put a large part of the people of Massachusetts in jail; but it was deemed desirable to subject Mr. Heywood to the odium of appearing to circulate his books clandestinely, as if they were not fit to be seen. For that reason, Comstock, as rogues generally do, hides behind a feigned name, — an alias, — tells the lie that he admired Heywood and his books, and asks the favor of having them mailed to him in New Jersey. He had been engaged with apparently great success in ferreting out obscene literature from the mails; and as if he were still about that business, and not a wholly different one, a very incautious prosecuting officer and grand jury of the United States find two bills of indictment against Heywood, each for having mailed (I quote the exact words of both indictments) "a certain obscene, lewd, and lascivious book (naming it), which book is so obscene, lewd, and lascivious that the same would be offensive to the court here, and improper to be placed on the records thereof." In regard to one of the books, the jury did not hold this to be true, because it acquitted. But, if it was true of either, it was true of both. And, if it was true of either, then would

many passages of the Bible be too offensive to that court to be placed on the records thereof. This language of the indictments put the prosecuting officer and grand jury in the place of the judge and petit jury. It prejudged the case. A fair indictment, if it did not set forth the entire book itself, — which I understand is held to be law on the other side of the Atlantic, — would have at least set forth in its express words so much of it that the jury could understand its drift, purpose, and intent, and the defendant could know the exact point of attack. Instead of this, the grand jury treated the court to a dose of judicial prudery, for which no court that respected itself could possibly be thankful. The criminality of words must lie in the intent with which they are used; otherwise, such an indictment would be as much a violation of law as the crime it charged. If words are used to allure the young to the "chambers of death," they are criminal; but there can be no crime in using any words necessary to warn them away. Under the law, as Judge Clark administered it, if Solomon and his family were alive to-day, he might be indicted for his Proverbs and Songs, and be in Dedham Jail along with Ezra H. Heywood. And, all things considered, which do you think should be pardoned out first? [Applause.]

Fellow-citizens, this prosecution and punishment of Heywood, to put the most charitable construction upon it, is a dangerous mistake. Grant that his doctrine is a social heresy: the only safety of the republic against social as well as political heresies is the perfect freedom of publication, allowing every man to load his literary gun, whether with wisdom or folly, sense or nonsense, and fire it in the face and eyes of the common sense of the public. Our fathers, about the end of the last century, frightened at the virulence and want of respect for authority in the political press, tried for a limited time the experiment of a "sedition law," so called, — that is, a law for the punishment of seditious publications. It made matters so much worse that, when it expired, they did not renew it. Half-a-dozen convictions under it were enough to prove the Constitution right and the law worse than useless. So, granting Heywood's doctrine to be erroneous and foolish, and even granting his motives to be bad (which I think no candid person can intelligently believe), the people who, under the false pretence of suppressing obscenity, have let loose upon him the old bull-dog of religious persecution have committed against the interests of society one of those blunders which are worse than crimes.

One word more. I am sure you will pardon me, if, standing where I do by your favor, I express my own opinion and define my

individual position in regard to the question of marriage. I believe the family is the foundation of the State, and the perfection of the family is the union for life, on terms of perfect equality, of one man and one woman. I believe such union in our country is generally happy, and is held together by an ever-increasing force, to which law or any thing from the outside can add nothing, — to wit, genuine, truthful, super-sensual love or mutual worship. I do not blame the law for punishing a man who deserts the mother of his children to follow another woman, and I sympathize with the public scorn for his baseness. But, considering that all laws are made and administered by men, and that women have no voice in the matter, I don't see where the law gets its right to punish the wife for slipping her neck out of the yoke. Men have put into their laws regarding women too little of doing as they would be done by, and I think Jesus was of that opinion when he said: "Neither do I condemn thee." [Long-continued applause.]

At the close of his remarks, the President introduced Professor J. H. W. Toohey, of Chelsea, who delivered the following address: —

Mr. President, Ladies and Gentlemen:

The memories I cherish of the reformatory efforts of Boston led me to believe I should meet a no less friendly presence than I see before me, and hear a no less emphatic approval of the central thought and moving impulse that brings us together than you have just bestowed on my honored predecessor. We are here, however, for a more earnest and determined purpose than a renewal of the memories of the First of August, 1834, all-honoring though they be to the mission of reform and the ministrations of humanity. The occasion, nevertheless, is eminently suggestive, and will justify a recall of some of the principles by which the pro-slavery usages of that date were made to conform to a more rigorous logic and a "higher law."

Historically speaking, there have been four culminations of fundamental thought, — grand acknowledgments of human duty in the history of reform. The *first* finds expression in the language of emotion, and takes the form of prayer for deliverance "from evil." The thought of one became the conviction of the many, and it was acknowledged that not even "the Almighty" had a right to trifle with the sensibilities of human beings and lead them "into tempta-

tion." More modern times still acknowledge "the sovereignty of God," but also insist that "man has rights."

The *second* concession to human well-being is no less fundamental, and, like the former, rests upon the assertion of Jesus and Paul. They are honored authorities in Christendom, and worthily so, when, by precept and example, they declare we shall not "do evil that good may abound." The conflicts of experience justify these generalizations, and civilized usages support their ethical significance on the common ground of well-doing.

The *third* grand awakening in human effort is a centre point in civilization, and is theoretically, if not practically, respected in Protestant nations. It began by reproaching authority in high places, and culminated in vindicating the integrity of the intellect and "the right of private judgment." It ignored the pretensions of the hierarchy, and invested the humblest individual with "the promise and potency" of nobler results. Popes and kings were alike influenced by its logic, and made to conform to its requirements. It was found to be friendly alike to the humblest worshipper and the most self-asserting sceptic. By way of distinction, it is now honored as "the great Reformation," and to very many thoughtful persons it is the grand demarcation of ancient and modern times.

The *last* acknowledgment that now needs special mention is more recent, and still more far-reaching in its influence and consequences. It is essentially American in its wording and appointments, if not in its thought-beginnings. It is known as the "Declaration of Independence," — the Magna Charta of human rights. It protests against the martyrdom of man, and invests the humblest member of society with the right "to life, liberty, and the pursuit of happiness." Its outlook and possible culmination bespeak a nobler civilization, and a more justice-loving condition of society. Humanity's progress is possible only so far as its logical requirements are acknowledged in law, and supported by custom, whatever legislators may do or say to the contrary. Whatever else we may neglect or sacrifice, the right "to life, liberty, and the pursuit of happiness" must never be made secondary to any policy, or surrendered to any assumption of authority or law: no, never! [Applause.]

These four grand acknowledgments are so blended with the outlooks and ramifications of modern thought, that we cannot address ourselves understandingly to the purposes of this meeting without keeping them in mind. They tone and temper our manners no less than our morals, and are known and appreciated in a greater or less degree by all classes of society. Not to recognize them is the

misfortune of the ignorant; but to violate them is the unhappy necessity of the criminally inclined. Art may be *non*-moral, and we may seem to tolerate or approve in the paintings and statuary of the past many phases of life that cannot come into the usages of to-day. We do so, however, in the theatre to a considerable degree, and praise the artist, man or woman, who can quicken the sensibilities and rouse the slumbering energies of the beholder. This is unconscious homage paid to the majesty of Nature, and to the inspirations of genius that finds "nothing common or unclean" in such glad and gladdening surprises; but in the drama of daily life we are less natural, and in many ways do violence to this moralism of art and good manners, forgetting, for the moment, that

"A want of decency is a want of sense."

It is *thus*, fellow-citizens, that the refinements of religion, history, national ethics, social usages, and the triumphs of art, all remind us of the deforming tendency of the Comstock administration. Obscenity may exist in some localities for reasons peculiar to them; but it belittles the pretensions of civilization to say it is characteristic of either the age or the nation. Be it, however, greater or less, there is no excuse for such idiotic violations of all the best usages of society in the methods by which Comstock entraps his victims and brings them within the penalties of the law. They outrage the most elementary conceptions of fair play and square dealing, and lead earnest minds to think the law-makers, rather than "the law-breakers," the real disturbers of justice and order. Whatever Comstock may be in his private character, as an officer of "the obscenity law" he ignores the supplicatory prayer of Jesus, and leads men and women into temptation and crime: he forgets the oft-repeated exhortation of Paul to "do no evil." In the republic of letters, he sets aside the "right of private judgment," and the humane democracy of the "Declaration of Independence." He creates crime by the authority of law, and manufactures criminals to magnify his office. He lies on system, and boasts of his duplicity. In the cities of the North, and at a time when hundreds of thousands of men, women, and children are suffering for want of the many necessities of life, he turns from the more humane labor of looking after the wants of the poor and needy to construct crime, entrap criminals, break up homes, fill prisons, and scandalize society. Forgetting the blessing promised to the merciful and the tolerant, he finds pastime, as well as business, in reviving the brutalities of the "Fugitive Slave Law" and the cruelties of the Inquisition. Fortu-

nately for society, the obscenity law has limitations as well as its expositor; else I should have to remind you, in the language of Webster, that "such a case warrants revolution."

If, then, accusations appear too general, consider for a moment, by way of contrast, the character and characteristics of one of his victims, — E. H. Heywood. And, by way of concession to the rights of the individual, let it be understood that it is a matter of secondary consideration, here and now, how far you or I may agree with or differ from him. Enough to know we are in the presence of an American citizen, a gentleman and a scholar; a man who has earned a right to particular opinions by special studies and painstaking methods; a thinker of marked and acknowledged ability, alike unimpeachable in his private character and public ministrations; a liberal among liberalists, and a reformer of the old anti-slavery type and school.

That such a person should be approached and captured by trick and falsehood, such as any thief-detective would practise on the lowest criminal and the most abandoned felon, reveals the desperate nature of Comstock's mission, and his utter inability to give the shadow of a decent reason, poor though it be, for his office and his services. Obviously, there must be something radically wrong in the national government, when the judiciary support such an officer, and give their approval to such methods.

To realize more fully the reward this Protestant inquisitor has in store for the radical thinker and honest reformer, man or woman, who, like Mr. Heywood, may desire to benefit the good and ameliorate the condition of the less fortunate, it is only necessary to take in the detail of Mr. Heywood's present position. He has been removed from his useful pursuits, his home broken up, his family made dependent, while he is confined to the restrictions, deprivations, and labors of prison life; a criminal according to law, a felon according to costume, — and all because he published some speculations on sexual philosophy.

Were it not that custom has familiarized the mind with the barbarous practice of making the unoffending family suffer with the victim of the law, the double cruelty of this legal tyranny would be obvious and apparent; but as it is, and so long as "custom is the drill-sergeant of society," the innocent children and the sorrowing wife must also be made to suffer. And all this because a traditional ecclesiasticism assumes and presumes to dictate to — if in fact it does not control — the judiciary. And, what is more surprising in this manifold offence against the decencies and civilities

of good breeding and legal fair dealing, is the reappearance of the old mistake of the United States officials in forgetting that Massachusetts is not in the habit of overlooking such insults to her citizens. Her most heroic achievements have been effected in vindicating the liberal spirit and usages of her officers and institutions against the centralizing and brutalizing tendency of the national government. And more than once Webster had to remind the conservatives of his day of the heroic memories so prominent in the history of the State that "contains within its borders Boston, Concord, Lexington, Bunker Hill, and Faneuil Hall, — the mother of States, — the revolutionary State."

And shall we, fellow-citizens, be less prompt to resent and to resist this indignity to the reformatory spirit of our State and age? Shall the free thought and free speech of Massachusetts allow such legal malpractice to go unrebuked, or Comstock and his clerical supporters to go unpunished? Shall we not rather repeal the law and dismiss the instrument that is so productive of evil, — doing so little good? Let your response to the resolutions to be submitted during the evening be your answer; and by them let your law-officers at Washington know that you still cling to the Declaration of Rights, among which is the right "to life, liberty, and the pursuit of happiness;" for Liberty, be it remembered, in the language of Henry Thomas Buckle, "is the one thing most essential to the right development of individuals, and the real grandeur of nations. It is the product of knowledge, when knowledge advances in a healthy and regular manner; but if, under certain unhappy circumstances, it is opposed by what seems to be knowledge, then, in God's name, let Knowledge perish and Liberty be preserved," — Liberty being not simply a means to an end, *but an end in itself.*

This apostrophe to Liberty will appear none too urgent, when it is known that the efforts made and the policy used to support Comstock are misleading better men, corrupting their morals as well as their religion. Already the ministers and writers of the Christian pulpit and press, in attempting to justify the methods of Comstock, adopt the logic of the Jesuit, and say, "The end justifies the means." The "New York Independent" goes further, and vindicates his use of lying. According to this line of logic, Comstock is a rat-catcher, his method a rat-trap, and his victims rats; and as it is meritorious to destroy such pests, so, by analogy of reasoning, the men and women who get into his trap are to be disposed of with equal promptness. A brutal conclusion, no doubt, but a natural sequence to the logic of the Comstock school, and a fit preparative for more systematic persecution.

See to it, therefore, citizens of Massachusetts, that you have good men and true in every department of government to represent you, and let the policy be as loyal as royal, that *obscenity* of *motives*, no less than obscenity in literature, may disappear from public no less than from private life; that life may be sacred, liberty unrestricted, and the pursuit of happiness the common privilege of the sons and daughters of a prosperous Commonwealth. [Applause.]

Professor TOOHEY was succeeded by THADDEUS B. WAKEMAN, of New York, who was introduced by the President as the author of the petition to Congress for the total repeal of the Comstock obscenity laws, which received seventy thousand signatures.

CITIZENS OF MASSACHUSETTS, BY BIRTH-RIGHT FRIENDS OF LIBERTY:

You have met *indignant* that one of your number, an editor against whom no man, woman, or child has ever complained of injury, who has not been unfaithful to the old Commonwealth or the Nation, has been imprisoned, as if a common felon, by the United States. You come under a sense of wrong, as your fathers did, to this old Cradle of Liberty, to ask why and how this wrong has come, and to consult as to the relief and remedy.

The answer is that the wrong has come from a violation of the Constitution of the United States, and of that very liberty the blessings of which our fathers declared, in its Preamble, they intended to secure by it to themselves and their posterity. This violation has come indirectly and ostensibly for the very worthy purpose of suppressing obscenity. Let me say at the outset that I respect the motives of the persons who have formed the "Society for the Suppression of Vice," and who have contributed to sustain it; but they have selected an improper "agent," and used means unlawful, unconstitutional, and unworthy of them. Your President has introduced me as the author of the petition, so largely signed, to have these laws in question repealed; and I wish, therefore, publicly to put my foot upon the libel that I, or others who have signed that petition, have so done as the abettors of obscenity or from desire to give it aid and comfort. The question has become one of constitutional liberty, and freedom of person, speech, and press, as to which a few dirty pamphlets in the mails are as nothing. We are all agreed upon the question of obscenity; no one has a good word for

that: but the issue is one of liberty, of constitutional liberty, and upon that we must take sides at once, or it will be for ever too late. People, however well-meaning, must not be allowed to imitate the bear who kept the flies off of his master's head by smashing it with a stone. The imprisonment of an editor for any thing he may print, except libel, is one of the most dangerous stretches of power possible in a free republic, and worthy of our gravest consideration. We must, therefore, under the Constitution, look closely as to the means and purposes with which this deed has been done. We shall find that the *means* are laws which have been passed by Congress; that, by *obiter dictum*, they have been sanctioned by the United States Supreme Court; and that, in effect, they take the very heart out of the Constitution.

When next we inquire as to the *purposes*, the "agent" of the society which has procured these laws to be passed informs us distinctly that it is "to stamp out the free press." His words approved by the society are these, — I read from the last printed report of that society: "Another class of publications issued by *free-lovers* and *free-thinkers* is in a fair way *of being stamped out.* The public generally can scarcely be aware of the extent that blasphemy and filth commingled have found vent through these varied channels, under a plausible pretence. Men who raise a howl about 'free press, free speech,' &c., ruthlessly trample under foot the most sacred things, breaking down the altars of religion, bursting asunder the ties of home, and seeking to overthrow every social restraint."

This purpose so plainly avowed is well illustrated by the seal of the society on the cover of their report, in which an author or editor is pictured as a miserable convict being shoved into a prison cell, while the grand and virtuous "agent" is making a bonfire of his books. Is not this a libel on our age and century? or have the Dark Ages returned? Certainly we have here a new index and inquisition. But if this avowal is not enough, here is a letter lately written to the "New York Tribune,"* in which the "agent" informs us that "*the work must go on.*" This letter is a perfect picture of illiterate bigotry, and of itself proves that this agent is the last person who should have been selected as the censor and in-

* Mr. D. M. Bennett, of New York, is about to publish an edition of Mr. Wakeman's speech, including Comstock's letter to the "Tribune," as well as the complete opinion of the Supreme Court, rendered by Justice Field in the Jackson case, touching the constitutionality of laws interfering with the freedom of the mails.

quisitor of American liberties and press, if such an officer we must have.

The danger of this work and these means and purposes lies in their alleged goodness, in their being represented as "*God's service*," which, as we only have to recall the doings of Torquemada and Calvin to remember, is too often but another name for man's woe, and the more so the greater the *sincerity* of the worshippers and the *interest* of their agents. That the majority are sincere, as in the case of this society, only increases the danger. In fact, in considering this and all social questions, we must ever bear in mind the three grand divisions of society.

1. There are the *Retrogrades*, whose ideal Eden, heaven, and hope for the race is to bring it *back* to some past state of society. They are mostly theological, and always praising the past times: *laudatores temporis acti.*

2. The *Conservatives*, who have enjoyments or great interests at stake, and wish therefore to preserve the present as long as they can, and then to go up and enjoy it all over again and for ever in a heaven just above, but not much in advance of, them.

3. The *Liberals*, who are generally poor, or educated, or both, and therefore often very radical and progressive. Their heaven and ideal paradise is in the future, for which they are always sacrificing themselves in the effort to make the present conform to it. This effort accordingly keeps them in constant conflict with the other two grand divisions of society, who have been generally in a large majority, and whose self-preservation it has been and is to stamp them out, or keep them in a serviceable degree of humility.

Now, without recalling these divisions, we shall not fairly understand Mr. Comstock's society, nor the Supreme Court, nor the Constitution itself. The Constitution is, in fact, the first grand and successful effort in government to harmonize these grand divisions. As such, it deserves ever increasing wonder and veneration as the only plan by which the great antagonistic claims of society are practically made to co-operate to the general good of the whole. The retrogrades and conservatives always combine to give stability to the national life, while the liberals secure its progress and growth. The static and dynamic powers of society are thus each used and provided for. The conservative classes give a solid framework for order in the legislation and administration, and then the Bill of Rights provides guarantees for liberty of person, speech, and print which will permit growth, and so renew the order, and prevent a despotism or a Chinese civilization. It was indeed a great tri-

umph of statesmanship to consolidate the States into a nation for general purposes, so that they and their people should preserve their safety and liberty only the more securely under the general shield of the Constitution; but it was a result that the most advanced philosophers and socialists may now wonder at, to find social order and progress practically reconciled, — to find order resting upon liberty, which constantly renews and enlarges order, even when it seems to fall! In other countries — as in France, for example — there has been little progress without revolution. The static elements always seek to "stamp out" the liberals until social convulsions result, with all the outrages consequent upon repression. Do not think this is an idle dream or a glittering generality: the Constitution is its practical embodiment. By it the people and States join in establishing a government to administer certain special grants of power for specified objects, but all for the general purpose of making liberty the fundamental law of the land.

To illustrate by coming to the very point in question, there is a grant, among others, that Congress shall have power "*to establish post-offices and post-roads*," and then to this and all similar special grants there is one of the incidental powers "*necessary and proper*" to execute them. — Constitution, sec. 3, 7, and 12.

Now these are the only words in the Constitution on the subject of the post-office. It is admitted by all to be no general or sovereign grant, placing Congress in the position of the British Parliament. The only powers granted are such as are necessary, useful, or, as Chief Justice Marshall said, "*appropriate to the end*" of establishing — that is, keeping in operation — the post-offices and post-roads. One may well be lost in astonishment at the fertility of the constructive faculty that can find in these simple words the power for the United States courts to sit upon the decency or morality of Mr. Heywood's pamphlet, and to fine and imprison him, it might have been for ten years, if it is found repugnant to the taste of the presiding judge. Ordinarily, small fines of $20 to $100 (except for robbery or gross obstruction) are found sufficient for postal purposes, — just enough to remind people of the necessities of the service.

The framers of the Constitution, and those who adopted it, were exceedingly and justly fearful of two things, — the granting of criminal jurisdiction to the general government, and the use of these "incidental" or implied powers. Congress was not even allowed to *define* the crime of treason to the United States, and the special

crimes they could punish were expressly named, as counterfeiting, felony on the high seas, &c.

For all post-office purposes, these implied powers are easily ascertained and unobjectionable. But the point is, whether these implied powers can be used, not for any postal purpose, but as the authority for criminal statutes of the most terrible and yet indefinite nature to effect what are supposed to be moral purposes. Can implied powers be used for purposes beyond the objects of the expressed power for which they were implied? Can implied powers become a source of original criminal jurisdiction outside of the ends for which they were implied as necessary? Can the part exceed the whole? The requirements or "conveniency" of the postal department do not need this extraordinary power. The post-offices and post-roads have been run for a century without thought that they needed such powers or protection. The exclusion of matter lessens the utility and income of the department, and in so far frustrates the object of the Constitution. Exclusion has therefore been made hitherto only on account of weight, or the injurious or dangerous character of the articles excluded, &c., — that is, on the grounds of the necessity or convenience of the service. This is evidently the only true and constitutional ground. With the meaning of the documents enclosed, the post-office has nothing to do; and, if they have not, Congress has no authority to punish for sending them. The test of the implied power is that it should be necessary or proper, — that is, useful and "appropriate to the end," — that is, required to effect the object for which it is implied; and, where this necessity ceases, the power ceases, for it has no ground to stand upon.

An implied power can never be an ulterior power.

The case is well presented by Judge Story, in his work on the Constitution, in regard to the power to "establish post-roads." Could Congress, under this clause, construct through the States vast systems of roads, over which the mail could be run, and thus make it authority for unlimited internal improvements? The answer is plain: Congress cannot use this power as a pretext to construct internal improvements, or to effect any other ulterior purpose; but it may use it when, where, and however it may be necessary or proper for the object of postal communication.

The meaning of mailed matter has nothing to do with the post-office, nor that with the meaning. There is no necessity nor "conveniency" of the service that is subserved by this penal law.

Therefore, it has no support in the grant of the Constitution, and it is a sheer, bold, monstrous pretext and usurpation.

It should be remembered that postal questions are far different in this country from what they are in England, where Parliament can do any thing except, as it is said, make a man of a woman, or a woman of a man; that is, physical impossibility is the only limit of parliamentary power. There the power over the post-offices and people is comparatively unrestricted. But our general government has only the special powers granted in the eighth article of the Constitution, and such implied powers as "are necessary and proper to carry those special powers into effect."

The simple and single word "to establish" post-offices and post-roads was *in no wise* intended to grant to Congress the British ulterior power of using them after they were established for objects not committed to Congress at all, but specially reserved to the people of the States, by Amendments IX. and X. That no such ulterior power was ever intended is clear from history. One of the greatest difficulties in procuring the adoption of the Constitution arose from the fear of these implied powers. Every clause was gone over and over in the convention that framed the Constitution, and in the conventions of the several States, to discover how these powers might be wrenched to destroy the liberties of the people. It is very significant that no one ever then supposed that this power to establish post-offices and post-roads could be other than such as should be simply devoted to that end. Luther Martin and Patrick Henry, who went over every word to find objections, saw none in this clause, and the authors of the "Federalist" (in No. 42) make their only reference to the subject in these few words: "the power of establishing post-roads *must, in every view, be a harmless power;* and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care." This plainly means that the postal power must be always and in every way harmless, since it was granted only for the public conveniency of facilitating intercourse between the States. Little did those patriots dream that a hundred years hence a grant, in every point of view so "*harmless,*" would grow by construction of an implied power into a terrible penal statute that has nothing to do with the "conveniency" of the post-office or of the people, or with facilitating their intercourse, but which seeks to prevent and limit all these for the ulterior object of supervising immorality. Had the possibility of this ulterior power been suspected *then*, the

Constitution would never have been ratified. Let any one who doubts it turn over the pages of Elliot's "Debates on the Constitution," especially the Virginia Convention, the "Federalist," and the second volume of George Ticknor Curtis's "History of the Constitution."

Thus, from the words of the grant, and their history, it is clear that no ulterior power of statute-making lurks in the "establishment" of post-offices and post-roads.

So this grant was understood and executed as "harmless" until 1836, when alleged attempts to circulate insurrectionary matter among the southern slaves brought a message from President Jackson to Congress on the subject of excluding such matter from the mails. Mr. Calhoun was made chairman of a special committee in the Senate, and the subject received careful consideration. He evidently wished for the power to exclude from and to supervise the mails in the interest of slavery; but, to his great honor be it said, he saw and declared plainly that the Constitution did not give Congress the power, and he would not claim it. The most he could ask was that, by the "comity of nations," the United States would restrain postmasters from delivering such matter in the States which had made its circulation illegal. The question was discussed fully in a Senate of unequalled ability, and even this limited restraint proposed by Mr. Calhoun was held, by a vote of twenty-five to nineteen, to be impossible under the Constitution. ("Congressional Globe," 1836, pp. 36, 150, 283, 287–9.)

In the debate, Henry Clay said: "When I saw that the exercise of a most extraordinary and dangerous power had been announced by the head of the post-office, and that it had been sustained by the President's message, I turned my attention to the subject, and inquired whether it was necessary that the general government should, *under any circumstances, exercise such a power*, and whether *they possessed it. After much reflection, I have come to the conclusion that they could not pass any law interfering with the subject in any shape or form whatever.* The evil complained of was the circulation of papers having *a certain tendency.* The papers, unless circulated, and *while in the post-office, could do no harm: it is the circulation solely* — the taking them out of the mail, and the use to be made of them — that constitutes the evil. *Then it is perfectly competent to the State authorities to apply the remedy.* The instant that a prohibited paper is handed out, whether to a citizen or to a sojourner, he is subject to the laws which compel him either to surrender or burn it."

Mr. Clay then proceeded to demolish the claim that Congress could legislate to carry into effect the laws of twenty-four different States or sovereignties, and said ironically: "I thought that the only authority of Congress to pass laws was in pursuance of the Constitution."

To the question of Senator Buchanan, of Pennsylvania, to the effect that the post-office power did give Congress the right to regulate what shall be carried in the mails, he replied in the negative, saying: "*If such a doctrine prevailed, the government may designate the persons, or parties, or classes, who shall have the benefit of the mails, excluding all others.*"

During the debate, one of the safest of Senators, your own "Honest John" Davis, said: —

"It would be claiming on the part of government a monopoly, — an exclusive right either to send such papers as it pleased or to deny the privilege of sending them through the mail. *Once establish the precedent, and where will it lead to?* The government may take it into its head to inhibit the transmission of *political*, *religious*, or *even moral* or *philosophical publications, in which it might fancy there was something offensive;* and under this reserved right, contended for in this report, it would be the duty of the government to carry it into effect."

The debate and vote on this subject were conclusive. For even the modified right claimed by Mr. Calhoun few voted with him but his faithful friends of slavery from the South *and* — James Buchanan; while with the majority were the great names of the Senate, including *Benton*, *Clay*, *Crittenden*, *Davis*, and — grandest of all — a name ever sacred in this hall, *Daniel Webster.*

The debate was, as I have said, conclusive. Through all the dark night of the slave power, through all the dread necessities of the Rebellion, if the mails were ever violated, it was without the form or countenance of law. The post-office, in law and theory at least, and I believe generally in fact, has since remained the common and impartial servant and friend of all.

I have cited this debate, and may recur to it again, for two reasons: first, because, if you look at the right, reason, and common sense of the matter, it is indeed conclusive; and second, by one of the most astonishing legal somersaults ever turned, the Supreme Court of the United States have made this very debate bring out the very opposite conclusion to which the Senators arrived.

If we inquire how this result has come, as in the case of most of our social evils, we must remember the consequences of our civil

war. Under the war powers of the Constitution, the government had to use incidental and implied powers to effect constitutional, but extraordinary, ends; and so, through the revenue, excise, postal, income, and other laws, a system of supervision of the people was inaugurated with a network of artificial crimes and penalties, as though the general government could do any thing that seemed to it expedient. After the war, the habits and precedents it induced have to a great extent remained. In no other way can the extraordinary mass of legislation that this "agent's" society has obtained from Congress and some of the State Legislatures be accounted for. These laws were, in effect, passed surreptitiously. The mass of the people never heard of them until they were being enforced. They therefore have no weight as deliberate laws of the Nation or the State. They are the private laws of the society which obtained them to be put upon the statute books without the knowledge of the rest of the community. In all cases affecting the people generally, the *Referendum*, or, at least, public notice and discussion, is necessary to make the laws in any proper sense the acts of the people or the nation. In 1872, the society obtained from Congress an act that the tickets and circulars of (illegal) lotteries should be excluded from the mails under a fine of $100 to $500. When the power of the society was consolidated in 1876, they had the word *illegal* stricken out of their statute, so as to exclude all lottery matter from the mails, whether illegal in the States or not. Under this act, A. Orlando Jackson was induced by a decoy letter of this "agent," under the false name of J. Ketchum, to send him a lottery circular by mail. The agent thereupon had Jackson arrested, indicted, and tried at New York in the United States District Court for sending a lottery circular through the mail. He was found guilty, and was fined $100 and imprisoned until payment. To test the law, his very ingenious and able counsel (A. J. Dittenhoefer, Esq., of New York) had before the trial (there being no appeal from the decision on the trial) applied upon petition for writs of habeas corpus and certiorari to inquire into his imprisonment. The petition was denied by the United States Circuit Court, and so the matter was brought before the Supreme Court of the United States.

Observe that the sole question, aside from the technical and very doubtful one as to the power to issue the writs at all, was as to the legality of these postal lottery acts of 1872 and 1876. The ground taken by the petitioner's counsel was that Congress had no grant of power to pass the acts in question, and therefore they were unconstitutional and void. That was the sole and only question before

the court; all beyond the decision of that question is *obiter dictum.* The briefs of the counsel on both sides in the case, which lie before me, present nothing further. The law of 1873, under which Mr. Heywood is imprisoned, was not before the court, nor argued at all; nor was the effect of the amendments to the Constitution prohibiting Congress from passing any law abridging the freedom of speech or of the press, or forbidding the seizure of property without warrant, upon either of these laws argued or presented to the court at all.

It was assumed by the court without argument that lotteries and the "press" must share the same fate, as though lotteries were the press, and not business adventures not included at all under the amendment of the Constitution securing freedom of the press.

But let us now look for a few minutes at the main points in the decision of the court. Mr. Justice Field, of California, delivered the only opinion in which the court is supposed to concur. At the start, he disposes of the main issue of the case — the only one actually presented and argued — by a singular assumption. It is this: because the validity of legislation regulating what should be carried in the mails as to weight and form and postal charges has never been questioned, and since such regulations have varied from time to time, therefore he infers that "the power possessed by Congress embraces the regulation of the entire postal system of the country. The right to designate what shall be carried necessarily involves the right to determine what shall be excluded." This begs the whole question. It assumes that matter has been excluded for non-postal reasons.

This argument from legislation and usage is, at best, of doubtful value. Time does not justify usurpation. But, to be of any service whatever, it must be shown that the legislation and regulations have covered ends beyond and ulterior to the purposes and ways and means *appropriate to the end of* establishing post-offices and post-roads. The counsel for the petitioner claimed that, for the one hundred years from the foundation of the government up to the lottery laws in question, there had been no legislation or regulations except such as were appropriate to the end, — that is, to the running and utility of the post-office department, — and that the attempt to go beyond this in 1836 was found to be unconstitutional in the debate we have referred to, and which he presented to the court. The learned judge himself, by the instances of "weight," "form," "postage," &c., really confirms this, for all such matters are plainly appropriate only to postal ends. But he argues that, because Congress has regulated as to *these* matters appropriate to the end, there-

fore it may do so generally, and as to matters that are not appropriate to the end; that is to say, because Congress is authorized to include, and has included, certain articles that conduce to the utility of the service, *therefore* "it may exclude others for reasons that have nothing to do with the service, but with certain supposed moral and religious ends!" The conclusion should be exactly the reverse; for usage can only prove the legality of acts and regulations in conformity with it, not of those opposed to it. The fact is that the unbroken and unquestioned usage proves, as far as usage can, the conclusion directly opposite to the one drawn by the learned judge.

In order to sustain the conclusion he reaches, laws, decisions, and regulations, showing that, from the adoption of the Constitution down, it had been the usage of the government to go beyond the necessary and proper ways and means for running the postal departments, would have been in point; but no such laws or facts are pretended or found by court or counsel. From the opposite facts presented, and even stated by the court, exactly the wrong conclusion has been drawn. The correct conclusion is that Congress has power to exclude for postal purposes and reasons, and no others. All other exercise of power of exclusion is a sheer usurpation.

The learned judge, having thus disposed of the counsel and his case in the way he should not, takes the whole case and more into his own hands. He does this because the wrong conclusion already reached by him brings him, as he intimates, into apparent, and, as we think, into direct, conflict with the Bill of Rights of the Constitution, known as the Ten Amendments. How, for instance, can this supposed power of Congress to exclude for non-postal purposes be reconciled with the clause, "*Congress shall make no law . . . abridging the freedom of speech or of the press*": or again, "*The right of the people to be secure in their persons, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized?*"

That Congress never intended to give the ulterior powers claimed is evident enough from these and other clauses which are utterly inconsistent with them. The learned judge, having by reversed logic found these powers in Congress, finds them to be useless unless he can enforce them consistently with the Bill of Rights. "And here," he truly says, "the difficulty attending the subject arises." But the same kind of logic is equal to the emergency, and in this way: He finds rightly that sealed letters and packets are

prohibited from being opened and searched while in the mails; also, that transportation and circulation of unsealed printed matter cannot be interfered with, for they are essential to the freedom of the press.

These are sound and healthy premises, and we expect the only logical conclusion, to wit: *Therefore*, Congress can pass no laws excluding such matters from the mails except for postal reasons, because such laws would abridge the freedom of the press, and be void. But again the learned judge has drawn exactly the wrong conclusion. He says: "If, therefore, printed matter be excluded from the mails, its transportation in any other way cannot be forbidden by Congress."

It is difficult to imagine a worse specimen of reasoning than this. The "therefore" works exactly the other way. Because transportation and circulation through the mails are, as he says, necessary to freedom of the press, *therefore* Congress cannot abridge them or take them away. No other conclusion is possible!

But the learned judge, to get around his own absurd conclusion, adds that, if Congress does abridge and take them away, then it cannot forbid the transportation in any other way! This only makes the logic worse: it grants that the exclusion is an "abridgment," and then seeks to obviate that conclusion by saying that Congress must not take away its transportation as merchandise!

That is, the press, before and since the adoption of the Constitution, has circulated its "letters, newspapers, and pamphlets" by means of two hands,—one the mail, the other as freight: now, says the learned judge, Congress cannot pass any law abridging the freedom of the press, which is its circulation; but, if it does, and so cuts off one of its circulating hands, it must leave the other. As though cutting off this right hand was no abridgment! The correct conclusion is that Congress cannot cut off either of these hands. Certainly, leaving one is no excuse for lopping off the other. Every attempt to make sense of this part of the opinion must be hopeless. Shakspere needed but a touch of this reasoning to finish the character of Dogberry, and crown his own genius as the poet of absurdity. [Applause.]

But one step in absurdity not only leads to another, but surely leads to unpleasant contrast with people who are not absurd. And so the learned judge finds that his singular logic brings him into a position of direct opposition to the great jurists and statesmen who had settled the question the other way in the Senate in 1836. He brings all of these great men, however, apparently over to his side

by a legal somersault as absurd, false, and amusing as his former conclusions and logic. He says, it is evident that the views of these great men "were founded upon the assumption" that Congress had not this power, *because* the postal grant to Congress is exclusive, and enables Congress to prohibit the transportation of newspapers and pamphlets over postal roads by any other way than by the mails. Now, he says, we will just turn back on the Senators, and capture their ground, by making this great court hold just the contrary of their assumption. "*We do not think*," he says, "*that Congress possesses the power to prevent the transportation in other ways, as merchandise*, of matter which it excludes from the mails." Now, first, this is absurdly irrelevant. The only question before the Senators was as to *postal* transportation, and that is the only one in hand now. Transportation "*as merchandise*" is entirely another affair. It belongs to commerce, which is under the control and regulation of Congress by another special grant. But, in the next sentence, the learned judge grants the very ground of the Senators, to wit: That Congress has exclusive postal power, — that is, power "*to put down rival postal systems in the carrying of letters, newspapers, and pamphlets.*" If, therefore, Congress excludes such matter from the mails, except for postal reasons, it can and does take away the use of the post-offices for ulterior reasons, which is the very usurpation the Senators complained of; and also it abridges the freedom of the press, which it is expressly forbidden to do. How absurd to say Congress may do both of these things, because it has not restricted commerce in freights! Mail matter is sent under the postal laws "for intelligence;" freights are sent as merchandise for entirely different purposes. Newspapers, &c., "as merchandise," may affect the junk-dealers, but have nothing to do with the freedom of the press. Congress cannot gain the right to exercise ungranted and prohibited powers under one clause of the Constitution by declining to exercise a power which it happens to have under another clause. It gains no power to pass alien and sedition laws because it refrains from suspending the writ of habeas corpus! Yet one of these is as much related to the other as commerce is to the postal grant and service.

The learned judge does not say, but his argument, to be good for any thing, implies, that the Senators denied the existence of this ulterior power *only* because they believed in this exclusive postal power, and did not have the wit to make this "merchandise" discovery. We may safely grant they did not make it. They were not equal to its incoherence. It may be regretted that it was not

mentioned, for it has the flavor of an "Irish bull," and would perhaps have relieved the bitterness of one of the first phases of the great slavery struggle.

But the position which the argument of the learned judge thus assigns to the Senators is not, in fact, correct. They founded their conclusion against the power of Congress to exclude for non-postal purposes not only upon the exclusive character of the postal grant, but also, and chiefly, upon the grounds taken by every sensible man since, to wit: That the power is not included in any grant to Congress, and would also be a plain violation of the Bill of Rights. The argument from the exclusive power of Congress was but one, and only a minor, argument, although good in their hands, as we have shown. The extracts already cited show that they took deeper and broader grounds; and extracts confirming it could be readily produced from the same debate to great length. Indeed, Mr. Calhoun himself finally said that the claim for this alleged power had been abandoned by the friends of the President.

Mr. Davis said, "*he denied the right of the Government to exercise a power indirectly which it could not exercise directly; and, if there was no direct power in the Constitution, he would like to know how they would get the power of the States, — a legislative power at most.*"

Mr. Webster expressed himself as "shocked" at the unconstitutional character of the whole proceeding. He said: "*Any law distinguishing what shall or shall not go into the mails, founded on the sentiments of the paper, and making the deputy-postmaster a judge, he should say was expressly unconstitutional.*" He denied that there was any grant of such power. And Mr. Clay, as we have seen, was emphatic on this point. Any who doubt have but to read that debate in the "Congressional Globe" and "Appendix" of 1836, to find that the Senators took every ground except the absurd merchandise theory of this opinion.

But, lastly, this assumption of the learned judge is amusingly absurd in its practical results. He makes the Senators not to have known what they were about to little purpose. He would then have obtained power to exclude "the insurrectionary," as now "the demoralizing," matter from the mails, by merely prohibiting Congress from passing laws to prevent its being sent as merchandise by express, &c. And thus it may be sent to any extent. Congress may throw out of the post-offices such "objectionable matter" as it chooses, on any whim or fancy; but then, he says, it cannot touch the same matter expressed as merchandise over the same postal route. But, if the same matter can be carried by express, why limit

the income and utility of the post-office, by throwing it out of them under such terrible penalties? Why should this simple difference between postal matter and merchandise subject the sender to ten years' imprisonment? Mr. Calhoun, doubtless, did not think of this stroke of statesmanship.

Having thus wonderfully ciphered out the power in Congress to pass these ulterior laws, his former absurdities bring the learned judge to the practical difficulty that they cannot, after all, be enforced without manifestly violating the Bill of Rights. He undertakes, therefore, to devise and advise how it may be done, — information of especial value to the "agent" who had the laws passed and received half the fines. The two ways specially sanctioned by this learned judge are *the post-office decoy system* and *the post-office espionage system.* Two plainer violations of the Bill of Rights — two meaner outrages upon liberty, decency, and morality — have never been perpetrated among our people! The learned judge did not invent them: they are old instruments of the Christian Inquisition; but the "agent" under these laws was the first to introduce them as modes of administration of our Constitution, and the learned judge is the first in this country to throw over them the benignant smile of judicial approval. This he does in a very smooth and graceful way. He admits that it would not do to examine into "letters and sealed packages" without warrant in the search for prohibited matter, but these regulations "may be enforced upon competent evidence obtained in other ways, *as from the parties receiving the letters* or packages, or from agents depositing them in the post-office, or others cognizant of the facts;" "and, as to '*objectionable*' printed matter, which is open to examination, the regulations may be enforced in a similar way, . . . and in some cases by the *direct action* of the *officers of the postal service. In many instances, those officers can act upon their own inspection;* and, from the nature of the case, *must act without other proof*, as where the postage is not prepaid, or where there is an excess of weight over the amount prescribed, or when the object is exposed, and shows unmistakably that it is prohibited, as in the case of an obscene picture or print. *In such cases, no difficulty arises, and no principle is violated, in excluding the prohibited articles,* and *refusing to forward them.* The *evidence* respecting them is *seen by every one,* and is in its nature *conclusive.*"

The "agent," who is also the *special post-office agent* of the government under this law and decision, operates a decoy system in this way: he sends letters of apparent approval for any article, paper, circular,

or advertisement; and, when received by mail, if he thinks it is "objectionable," although the letter or packet was sealed, he has his correspondent arrested and locked up; and, if it is a lottery circular, or if it is "offensive to the decency" of the United States District Judge before whom the agent brings the case, he, as judge of the law, practically orders a verdict of guilty, and may send the victim to prison for ten years with a fine of $5,000, *and there is no appeal whatever provided in such cases;* and one-half of the fine goes to the agent "who put up the job."

Or, again, if you send any newspaper or *printed matter*, the case is worse; for, in addition to the decoy system, this special agent, or any other "officer of the postal service," instead of being limited in his postal duty to seeing that the weight and postage are correct, and that it does not contain matter subject to letter postage, has also imposed upon him the moral duty of censor of the press, — that is, he is, "upon his own inspection," to see that the printed matter is not objectionable, "as in case of obscene picture or print," or in cases of lottery circulars, &c.; and if he finds that it is "objectionable," then "*no principle is violated*" in his "excluding the prohibited articles or refusing to forward them." But suppose you do not know or believe the matter you may have thus sent is "objectionable," and so you go innocently to inquire why it has not gone to its destination? Then the "agent" is waiting for you, and arrests you at once. There is no certainty that the delicate "decency" of a United States District Judge may not be offended; then you may go to prison for ten years, under a fine of $5,000, and the agent is rewarded for his diligence by half the fine, and you have no appeal!

This is the kind of work that was done in the cases of Lant, Jackson, Heywood, and others I could name; and the "agent" is waiting for your indignation to subside to push on "*the work*" of "stamping out" the free press under the approval of the highest court in the land!

If laws that have these results do not "abridge the freedom of speech and of the press," how can it be done? How "*secure*" you are in your letters, papers, and effects when you intrust them to the "officers of the postal service" to find that they are stopped without warrant, or taken out as a decoy or trap to get you into State's prison by use of them as evidence, and to enable the informing agent to get half of any imposed fine. Under this decision, the pretence of safety of papers, and liberty of circulating, are worse than vain. The very muniments of personal liberty are a snare and a delusion, for they are turned into instruments for its destruction.

The story is that the garrison who surrendered to a Turkish pasha were solemnly assured by him that not a drop of their blood should be shed. After the surrender, he immediately ordered every one of them to be hung, and so kept his promise to the very letter. What morality is it that induces a judge of the Supreme Court to keep the precious guarantees of the Bill of Rights in the same way?

Yet it is in the name of "public morals" that this result is reached. He concludes by the consoling assertion that the object of Congress has not been to interfere with the freedom of the press or with any other right, but to refuse mail facilities for the distribution of matter deemed "injurious to the public morals." Then, for the first time, the hitherto undisclosed reason for going beyond the issue presented by counsel at the case — the motive for this long *obiter dictum* — appears. The learned judge at last, by force, drags in the act of March 3, 1873 (the one under which Mr. Heywood was convicted), and renders it constitutional, as far as his word can do it by way of illustration, without its being in issue before the court or the subject of argument. To do this, he quotes the main section of the law of 1873, and then settles the whole matter in two sentences, which, when we consider the importance of the consequences, fill us with astonishment. He says:—

"All that Congress meant by this act was that the mail should not be used to transport such *corrupting publications* and articles, and that any one who attempted to use it for that purpose should be punished. The same inhibition has been extended to circulars concerning lotteries, — institutions which are supposed to have a *demoralizing influence* upon the people."

All the learned pretence of "reasons" is here swept away. It is at last plainly avowed and averred that Congress has the power to exclude, and to run the post-office for moral and ulterior grounds, and, for and on those grounds only, to punish with any penalty it may name — even of life — any attempt to send any thing or publication through the mail that it may "deem" or "suppose" to be "injurious to public morals" or of "demoralizing influence."

As our President said here to-night, if this is the law, the Constitutional Bill of Rights is not worth "two brass buttons," nor *one*. "All that Congress may mean" by any other act will be to exclude "libellous and seditious" publications, as under the sedition law; or "incendiary and insurrectionary" publications, as under Mr. Calhoun's law; or, as soon may be the case, all "revolutionary," "communistic," "socialistic," "destructive," "riotous," "blasphemous," "irreligious," &c., articles and *publications*, just as in its un-

limited power and wisdom it may at any time ordain, with penalties of fine and imprisonment, or of life and death. And yet all this will have nothing to do with the freedom of the press or the liberties of the citizen. If you examine, you will find that the first, fourth, fifth, eighth, ninth, and tenth, which are the main articles, the very substance, of the amendments to the Constitution, or Bill of Rights, are violated by *these laws* and *this decision*, and that, if they are to stand, this Bill of Rights is not worth the paper upon which it is printed.

But not only is the Constitution and freedom of the press and people overthrown by these laws and this decision, — the United States courts receive thereby an unconstitutional, dangerous, and most indefinite enlargement of their criminal jurisdiction. This case of Mr. Heywood ought to bring this danger home to you. Our fathers feared nothing more than this. The United States courts were regarded by them, as in fact what they are, as foreign tribunals to the mass of the people. The judges sit for life, without responsibility to the people; few lawyers know the practice; the juries are so selected that they are "packed" in effect, if not by design. The districts are so large that, even in the same State, the accused rarely has a "jury of his peers or vicinage." And — most surprising of all — in this criminal class of cases there *is no appeal whatever*. Think of one fallible man, under the most indefinite of laws, with the absolute power of fine and imprisonment, and even in some cases of life and death, in his hands, — and no appeal! As those who were present at the trial and sentence of Mr. Heywood describe the outrage, it reminds me of one of Judge Jeffreys's trials, and illustrates well the dangers to which I refer. The judge decided practically the law and fact; and, when the jury hesitated, he wrung a verdict from them by a charge "in a roaring passion." Two judges sat, and gave the victim "a double dose," because he had not promised to give up his constitutional right to send his pamphlet "as merchandise," and would not repent of having sent it at all, — thus acting not as officers of even this infamous law, but beyond it, and as executioners and "confessors" of the new Inquisition. As Jefferson and Henry and Luther Martin said, "the United States will be constantly gaining power by construction, and the people constantly losing; judge you in which way the balance will run. Where an inch is given, an ell will be taken."

The lesson is that, if you would not have Liberty leave you, she

must be guarded in her home among the States and people, and not be trusted out to United States judges and officials.

"But what," says the "agent," like another "statesman" of New York, who stole our money (a trivial matter to our liberties), — "what are you going to do about it? I have the law and the courts, and now the Supreme Court itself!"

What we do will depend upon what we are. If unworthy of our liberties, we shall lose them; if we rise to the height of the issue, we shall place them upon a firmer foundation than ever. [Applause.] Do not be appalled because the Supreme Court is against us: that may be the very condition of success. "Two things you can do when you are beaten," said a famous New York judge to a young lawyer: "one is to appeal; the other is to go down to the tavern, and abuse the judge." But in the Supreme Court we are told there is no appeal, and so Faneuil Hall has been kindly granted to us by your Board of Aldermen instead of the tavern. Think a moment! *Is* there no appeal? In all great cases in a republic, in all cases touching the rights and liberties of the people, who are the final judges of the law and fact? Plainly, the people themselves. The Supreme Court, being always retrograde and conservative, is almost sure to get on the wrong side whenever issues of liberty and progress are presented. They go for the *old*, and *for power;* the people go for the *new*, and *for liberty:* and in such cases they and *their* government have never failed to reverse the court. The decisions of the Supreme Court of the United States upon questions of popular rights and liberties are the *Apocrypha* of our constitutional law. The reversal of them has almost become a rule. Let me recall a few prominent cases none can forget.

John C. Calhoun said that, up to his day, only one great constitutional question had been settled, — to wit, the unconstitutionality of the alien and sedition laws, — and that question had been settled "*against the Supreme Court.*" Judge Story sought to parry this thrust by showing that these laws were never really before the court. True, the Republicans knew enough to keep them out of that court, and thus to avoid an adverse decision; for decisions were in fact rendered in favor of those laws in every other federal court under their influence.

Then came the question of the United States Bank. Andrew Jackson said, when the decision sustaining the constitutionality of the United States Bank came: "*Now Marshall has made his decision, let him enforce it.*" The people sustained Old Hickory. The country was saved from the dominion of a moneyed aristocracy, and

the court's decision took its place in the Apocrypha, with the sedition laws.

Then came the slavery agitation. If this question of "insurrectionary matter" in the mails had come before the Supreme Court *then*, there is little doubt that it would have registered the will of the controlling Slave Power.

Of the constitutionality of the Fugitive Slave Law, and of all of its infamous details, "the Court had no doubt."

Then the *Dred Scott decision!* who can forget?

Then the Habeas Corpus decisions, against Lincoln and the war-power of the Constitution, only by disregard of which decisions the nation lives!

Then came the first Legal Tender decision, when General Grant, who had saved us from the Rebellion, lost all patience, and had to save us from this court, by taking off two judges bodily, and putting others there who could see that the war-contracts of the nation were constitutional, and had to be kept. And now, at last, comes this Jackson-Lottery-Postal case, — in many respects the most insidious and dangerous of them all.

What shall be done about it? The decisions of this court always of course settle the cases decided as to the litigants. It is settled, for instance, that Jackson had to pay his fine to get out of jail; but that is all, *unless* the people choose to let it settle more. The Supreme Court is a final *legal* tribunal in the cases before it, but not a final social, political, and, above all, not a theological, religious, or moral tribunal. It settled that Dred Scott was a slave; but the people thereupon decided that every other Dred Scott should be free. That the post-offices are decoy traps and under the "moral" espionage of the officials is the sum of this decision: the people may demand that the post-offices must be free, equal, and safe to all! If we have the courage of the issue, they will so demand. Remember that every great and successful party in this country has had the adverse decision of the Supreme Court of the United States as its very *corner-stone*. Thus the Republican party of Jefferson rested upon the Alien and Sedition Law decisions; and the only regret that lingers around the memory of your noble John Adams, whose bust stands behind me, is that he did not trust the people, that he assented to this law; for he never approved it.

Then, the great Democratic party of Jackson was founded upon opposition to the abuse of implied powers which culminated in the famous United States Bank decision.

Then, the Republican party of Lincoln, — that was really founded

by the adverse Fugitive Slave Law and Dred Scott decisions of this very court.

Now we have the decision that may found another party. How far Liberalism is to become a political power in this country will depend upon the delay of Congress in repealing this law. I hope it may never become a political party at all. I dislike the thought of moral or religious political issues. Let all reasonable, moral, and persuasive means, by petition or otherwise, be used first; but, if that is unavailing, let every Congressman know that he has a new source of danger at the polls. The Liberal party is young now, — just beginning to see that it has a call to become organized for protective social and religious purposes. But, young as it is, it must meet this issue with a decided protest, — a protest that will keep this infamous decision from ever becoming the law of the land any more than those I have named. It is the only party that has the will or the courage to meet this question. The others will lie supinely by, and be bulldozed out of their liberties by the cry of obscenity. The real growing end, the priceless new life of the nation and the people, falls to its care and charge; and that too at a period of our country's history when nothing can be more dangerous than repression, — when repression will be but another name for revolution.

The real Constitution of the country is this new life — this liberty, out of which the written Constitution grew, and a new and improved order is to grow. That liberty is the priceless treasure that Patrick Henry was so afraid to commit to a federal power that might become a federal tyrant. The spirit of liberty and the maxims of liberty, — they are the true Constitution of the American people, he continued to repeat, with a wisdom that DeLolme and Mackintosh and more recent political philosophers have now more fully disclosed. "Constitutions grow, and are not made," they tell us. They are not dead pieces of parchment, but living organizations that enlarge with the people because they are the living skeleton of their life. They grow by constant construction. All great questions of liberty and government are with us, therefore, questions of constitutional construction too great to be decided by any court. Every decision against the "American Spirit" that Patrick Henry invoked has been overruled.

And now the deepest question of all is touched, — the liberty that is the heart of the living social organism. The birthright secured to us in the Bill of Rights, by Massachusetts and Patrick Henry and Jefferson, as the very condition of accepting the written

Constitution at all, is to be stricken out. Will you submit to this? If you acquiesce, the Retrogrades and Conservatives will have full power and control of both government and people henceforth. The only protections for the liberal minority, who are the new, growing, and precious life, upon which, as in a plant, the whole of our national and social progress depends, will be gone for ever. While, therefore, you have voice or vote, unceasingly let them be raised for the repeal of this law, in protest against this stupid decision, and in assurance that the people will acquiesce in it as the "law of the land" never, *never*, NEVER! [Tremendous applause.]

But, in our indignation, let us not be unjust to the order that the written Constitution ordains and sustains. Liberty, progress, and order are all harmonious in a Democratic Republic, and must sustain each other. While we criticise with utmost freedom the decisions of our highest court, we shall not forget its necessity or its great services as a great legal tribunal. Let no one suppose that the opinion we have just reviewed is a specimen of its statesmanship or reasoning. That is not a legal, but a moral and a religious decision; and under a "*religious duress*," who is responsible? Where the giant, Superstition, throws his shadow, the powers of the mind are paralyzed and even reversed. Pascal was prostrate before the cross. "The mighty intellect of Newton" stood before the "prophecies," like that of a rain-maker before his fetish. That such an opinion could have been "handed down" from the highest court in our land proves, as nothing else could, the necessity of a liberal sect and party in America.

The trouble with these judges, and the "society" they are sustaining, is that they are Conservatives, and also at heart *infidels*. They have no faith in the integrity of the universe or the goodness of man. The one is subject to miracles, the other to total depravity. The laws of the first may be set aside any moment by their God; and, if man is not controlled by the "agents" of the same God, — if a free press and free speech are really allowed, — then those who enjoy it will "ruthlessly trample under foot the most sacred things, breaking down the altars of religion, bursting asunder the ties of home, and seeking to overthrow every social restraint." So it seems to them; and they have given us a decision from the fears of their hearts, instead of from the clearness of their judicial heads. Mr. Justice Strong even wishes to put God into the Constitution. The people are not enough for it to rest upon.

"Oh, ye of little faith!" the laws that mould "the lilies as they grow" prevail too through the human world. The religions and

the altars and the ties that need to be preserved by "restraints" of unconstitutional laws and decisions are condemned by that fact as "*superstitions*." The struggle you are opposing is really the effort of human nature to rise to a newer, purer, and truer social state, to a religion so consonant to human nature that it will be a duty and not a restraint, to an altar not red with the blood of sacrifice, but loaded with the gifts of gratitude to humanity for liberty and welfare achieved.

What are profanity and obscenity, any way, but the corruption and disintegration of theology? It is only depraved theologians who misuse theological names, and turn purity into obscenity in word or deed. Liberty, knowledge, truth, health, will scatter both, as the pure breeze clears the noisome air. To purify the fountain, do not break or obstruct it, but let the waters run fresh and clear.

Thus we find that this unconstitutional espionage-law is also impolitic and injurious to morals. Its repeal is justly called for upon both grounds in the petition referred to. A post-office regulation that all matter should be enclosed, and that postal-cards should contain nothing that could be offensive to those to whom they are sent or to the public, is all that is necessary. This matter of the postal-cards is entirely in the power of the Department as a necessary postal regulation. It is evidently inserted in the law in question only to give it the color of necessity. If it is thought best to retain the form of the law, it should be materially modified so as to be within the postal powers and purposes only.

This suggests the last point I shall touch; that is, public protection from actual obscenity. That is a matter reserved by the Constitution to "the people and the States," as Mr. Clay said as to incendiary matter; and they have only to do their duty. The price of purity, as of liberty, is eternal vigilance, and no laws can remove the necessity of its exercise. The principal trouble is said to be with children and schools. The remedy is the power and the duty which the common law gives to, and imposes upon, parents, guardians, and teachers to see to it that they know what their children and wards read. A word to the postmaster to deliver printed matter sent to them to the legal guardian so that he can distribute it is all that is really necessary. If tried, I do not think that any obscene matter will ever come. Instead of it will probably be found dime novels, sensational novels, and boys' and girls' newspapers, and Sunday-school trash, — all as "corrupting," "demoralizing," and dangerous, in fact and effect, as any obscenity.

As to grown people and public decency, the matter will be taken

care of, as now, by the State and municipal regulations. You have long-standing and sufficient laws on the whole subject in Massachusetts; and, if Mr. Heywood had been found guilty under them, I should have left the matter to you as her citizens. I should never have come here to enter my protest. But the case is far different when a citizen of New York comes here, and arrests and convicts under a law of the United States and by their pretence of authority. Where he goes for such purposes, I felt it a duty, at no little sacrifice, to follow and protest. With what use and effect this protest has been made, you must determine. The net of legal precedents woven for others will be woven for you. The birthright of American liberty, — it is the tradition of this hall, — *that* you will protect. The past has made it your duty. If that birthright is sold or lost for any object or upon any pretence, however moral or specious, *the fact is it will be gone;* and when, Esau-like, you seek it, after many days in need, and even with "sorrowing and tears," you shall find it not! [Applause.]

The next speech was delivered by Rev. J. M. L. BABCOCK, of Cambridge.

MR. PRESIDENT AND FELLOW-CITIZENS:

We prize the right of free speech and a free press because it is a right preservative of all others. There can be no liberty, and it would be useless to expect morality, in any society that permitted this right to be struck down. Our Revolutionary fathers, who had studied the principles of liberty in a most instructive and inspiring school, hastened to put a guarantee of this right into the Constitution. Mark the significant phraseology of our organic law. It does not pretend to create or provide free speech and a free press either as privileges or rights: it simply but clearly guards from injury a natural right which constitutions can neither create nor destroy. It does not say, "The right of free speech and of a free press is hereby established:" it does much more than that. Recognizing a natural right already in the fulness of its power and the grandeur of its ministry, it says, "The freedom of speech and of the press shall not be ABRIDGED!"

We are here to-night to vindicate the right of free speech and a free press, violated and imperilled by the conviction and sentence of Ezra H. Heywood, a man who, guiltless of any crime, now lies in Dedham jail. Freedom of speech means the absolute right of

every man and woman to express his or her own opinion. If the opinion happens to be offensive, the person who utters it is to be all the more vigilantly guarded against assault and protected against suppression. There must be liberty for each and for all, or there is no liberty. The moment a man can be punished for expressing an opinion, that moment the right of free speech is overthrown. No power exists in this country authorized to deny this right to the humblest citizen in the land. Mr. Heywood published his opinions, as he had a right to do. If he put his publication in the mail, he had a right to do it. He has done nothing he had not a right to do. It is for exercising his rights as an American citizen that he is now in prison.

We have nothing to do with the question of obscenity to-night. It has been said, indeed, in reference to this meeting, that the only two facts of which the public had heard — that a man had been convicted of sending obscene matter through the mails, and that a meeting was called to protest against that conviction — was susceptible of only one logical inference, namely, that it is an outrage to interfere with the circulation of obscene literature. But surely men have before now been unjustly convicted under a just law; and it might have occurred to any one who knew the difference between sophistry and logic that *one* logical inference, at least, from these two facts was, that a man had been unrighteously convicted, even though the law might be unobjectionable.

Some people seem to have fancied that we must here take up free speech and morality as rival questions, and balance the conflicting claims of each; and that we can after all allow ourselves only so much of the luxury of free speech as may be found consistent with due legislation against immorality. But we are reduced to no such pitiful dilemma. We are not at liberty to weigh out one of these things against the other. Essential as morality is, not even legislation to promote it can be permitted to restrain or impair free speech. If free speech goes, the country goes with it. We will first know that we have a country; and then we may study to promote its general welfare. But our institutions tremble through all their framework when you assail the liberty of speech. The organic law of the land gives you no license to put any thing in the balance against this great right. It does *not* say that obscene publications shall be excluded from the mails: it *does* say that the freedom of the press shall not be abridged!

We have no business to inquire as to obscenity to-night. Mr. Heywood was tried and condemned for his opinions. As to that

I suppose there is no dispute. We cannot weaken his vindication by inquiring into the nature of those opinions. It would be irrelevant to the issue to do so. If a man has a right to publish his opinions, and his right is assailed, it is simply impertinent to ask what his opinions happen to be. Therefore no other question can be permitted to enter into a conflict for the rescue of an imperilled right.

In protesting against this last outrage on the freedom of the press, I arraign, first, the act under which Mr. Heywood was convicted. It is a blind, vague, and uncertain statute. It did not come upon the statute-book in a legitimate way. In this country, where the people are the source of political power, the proper origin of a public measure is with the people. The best expectation of getting wisdom enacted into statutes is when a law is demanded by the people, — when, after a season of popular agitation and discussion, it is enacted by the representative body. But this Comstock law — not demanded by the people — was hastily lobbied through Congress; and suspicion of mischief always clings to a bill of the lobby. The passage of a bill in Congress over the Executive veto, last winter, was largely due to the popular indignation and distrust awakened by the fact that the act which it repealed had been surreptitiously passed. And something of indignation and distrust attaches, for the same reason, to the Comstock law.

But, worse than this, it creates a crime which is not legally defined. It punishes the sending of obscene matter through the mails. But it does not define what is obscene; and, though the judges may turn to the dictionaries, they find no definition of the word there. The dictionaries make a slip-shod pretence of defining the word by synonyms, — or, it would be more accurate to say, by euphemisms. The dictionary-makers evidently suppose that a real definition of this disagreeable word would shock the public taste. An act, then, which provides penalties for a crime it does not define, is only an instrument of injustice. To show that all the iniquity in the execution of this act is not confined to a single instance, take the case of Mr. Jones, of Ashland. Comstock arrested Mr. Jones for sending a certain book through the mails. Taking counsel of one of the ablest lawyers in Boston, Mr. Jones was advised that, as there was so much uncertainty in the meaning of the law, and as Comstock had established such a reign of terror in the courts, his easiest way out of the difficulty was to enter a plea of guilty, in hope of a light sentence. He did so. When the case was called for sentence, Judge Lowell — who seems to preserve some of the traditions of

the bench in its purer days — gave it as his judgment that the book on which the respondent had been indicted did not come within the statute; but, as a plea of guilty had been entered, there was no course but to pass sentence. And he imposed the lightest sentence, almost, the law prescribed. Such was the absurd and monstrous operation of this Comstock law, — a man punished for a crime of which he was pronounced innocent by the very court that sentenced him! On this legal farce not a comment, against this cruel mockery of justice not a word of remonstrance came from a daily paper in this city. As to this outrage the press was dumb through its entire range, from the sanctimonious "Advertiser" up to the mellifluous "Herald." A law under which even a humane judge is constrained to enact a judicial farce and inflict a wrong like that should not stain the statute-book an hour.

In the next place, I arraign the agent to whom is intrusted the work of enforcing this law over the entire Union. Anthony Comstock does not, it seems, undertake to detect crime already committed: he goes cunningly at work, in the use of the vilest arts, to induce people to violate the law in order that he may punish them. All his convictions, by his own testimony, are for infractions of the statute which he has caused. It is a work no honorable man could do. He is a professional falsifier; and he seems to lie from pure love of lying. This appears in the case we are considering to-night. He wrote to Mr. Heywood, under an assumed name, ordering certain books. Now admit, if you please, that he honestly considered it necessary to his purpose to assume an *alias*, — was any other lie necessary? Yet this virtuous agent of this virtue-promoting law actually added to his order some words of pretended sympathy with Mr. Heywood in his work, encouraging him to persevere, — words for which there was absolutely no occasion and no necessity. I heard him at the trial read those words, in his testimony, as a part of the letter he had written to Mr. Heywood; and he read them, too, without apparent consciousness that he was advertising himself to every listener as an ingrained liar, whose gratuitous and wanton mendacity showed that he lied because he loved to do it. And every thing that is known of his proceedings in connection with this law confirms the impression he made by reading that letter. You may search all the annals of crime, and you may search in vain for a professional informer and spy that did not ultimately turn out to be an infernal scoundrel. Comstock seems to be a pronounced type of his class, — the Titus Oates of this generation, in whom the features of his prototype appear, only modified by the

changes of two hundred years. Nothing can be more preposterous than the delusion that such a man can serve the cause of virtue.

Finnally, I arraign the court that tried and sentenced Mr. Heywood. I know that we have been taught to reverence the judiciary; but we are not to permit that feeling to blind us to the blunders or the crimes of the bench. The fact is, we are beginning to discover that judges are not demi-gods, but men with the prejudices and passions of other men. And since it has become the fashion to clothe with the judicial ermine decayed politicians, or defeated office-seekers like Daniel Clark, our laws are frequently administered by men who bring to the bench the partisan habits of mind formed in heated political conflicts, tempered only by the arts learned in the caucus; and where such men preside, the calm, unbiassed judicial mind, the unimpassioned judgment, and the clear impartiality do not appear. It is not long since we saw one of the most momentous questions ever submitted to the judicial mind intrusted to the decision of the gravest judges of the highest court in the land; and we saw that every "mother's son" of them decided every point that came up in that case according to his party interests and predilections, — and the vote went on to the record *eight* to *seven* every time. So it cannot be said that a judge is above criticism.

Now, throughout the trial of Mr. Heywood, Judge Clark exhibited a passionate eagerness to secure a conviction at all hazards. I have not time to go over the separate evidences that such was his purpose; but one passage in his charge to the jury may serve as a fair example. Judge Clark held in his hands the destinies of Mr. Heywood, as it turns out, for two years. It was a grave responsibility. An upright judge might have said to that jury, "Gentlemen, in deciding whether or not these books are obscene, a difficult and delicate question is submitted to your judgment. The statute does not define the term, and it is not clear what all the legal meanings of it may be. In classing different publications, there is a border-land where it is not easy to draw the line. It is your duty to carry out the true intent and meaning of the statute, but you must give to the accused the benefit of every reasonable doubt." But Judge Clark said nothing of this character. No word of his reminded the jury that a man was presumed to be innocent until proved guilty beyond a reasonable doubt. This is, in substance, what he did say: "If the teachings of that book ["Cupid's Yokes"] should be generally received, how long would it be before your beloved Massachusetts would become no better than a vast house of prostitution?" I will

not stop to rebuke as it deserves this foul imputation that, were it not for the marriage laws, the men and women of the State would abandon themselves to indiscriminate licentiousness. Yet this judicial slanderer ought to know that the purity of woman stands in something better than the restraint of man-made law. However you may think the conduct of a few persons is affected by the laws, I do not hesitate to say, that you may wipe from the statute-book to-morrow every marriage law, and the chastity of the women of Massachusetts would remain as invincible as it is to-day. But I pass over that. The main question, almost the only question, before that jury was, whether or not the indicted books were obscene. It was a question of fact for the jury to decide, and for the jury alone. The judge had nothing to do with the decision of that question; and, if he had an opinion upon it, it was his duty to keep it from the jury. An honest judge would have been careful that the jury should receive no bias from him. But, when Judge Clark pronounced those words, he took the function of the jury out of their hands, and decided for them the very fact which they alone could legally find. When a judge usurps the office of the jury, and decides in advance a point which can only be properly decided in the jury-room, we can do nothing but hold the conviction obtained by such means as no better than a judicial mockery; and Mr. Heywood must still be adjudged innocent of any offence under the law. Juries receive with such deference the lightest nod of the bench, that it is hardly fair to hold a jury responsible for a verdict which the judge practically instructs them to render.

And yet we have been taught such reverence for the judiciary! Daniel Webster once said, speaking of a citizen of New York of whose fame the whole country is proud, "When the spotless ermine of the judicial robe fell on John Jay, it touched nothing not as spotless as itself." "When the spotless ermine of the judicial robe fell on" Daniel Clark — it was almost time to send it out to wash. Do not think me severe. When I think of that man, whose character is without a flaw and whose life without a stain, in his unmerited prison, and think how the ordinary forms of law were broken down to send him there, — in the indignation I feel, no language seems too severe.

As we found in the case of the Fugitive Slave act, it usually happens that a merciless statute is administered in a merciless manner; and the closing proceedings were marked by the same disregard of justice which distinguished the trial. Mr. Justice Clifford, sitting with Judge Clark when sentence was pronounced, said to Mr. Hey-

wood (I give, not his language, but the substance of it in fewest words) that the sentence might have been less severe if he had given the court assurance that he would not circulate his book outside the mails, and if he did not still claim that he was right. As to the first of these points, the law only related to transmission through the mails ; and the court had no authority to inquire, and no business to think, whether or not an indicted book was circulated otherwise. It was, therefore, nothing but exasperating usurpation to punish a man on any such ground. As to the second, it is one of the worst forms of judicial despotism to add to a man's punishment because he will not surrender his convictions at the bidding of a court. It is the first time I ever heard of an American court presuming to invade the region of the conscience, and put a penalty directly on the human soul.

This, then, is our case: (1) The law punishes a crime which it does not define, — a fatal objection to any statute. (2) The agent who is specially and solely employed to prosecute offences under the law is, so far as appears, an untruthful and dishonest man, and employs methods abhorrent to every candid mind, that tend to subvert the ends of justice even under the best of laws. (3) Whatever may be thought of the law or its agent, the trial of Mr. Heywood was conducted in disregard of the ordinary legal maxims and forms of proceeding in such trials, and his conviction is, therefore, illegal and unjust. With this case we go to the people. And I say, in closing, that we are all concerned in the outrage on individual rights committed in the imprisonment of Mr. Heywood. We are never to forget that society through its entire fabric is injured when an injury is inflicted on one of its members. You cannot ruthlessly strike down one man without disturbing the moral foundations of the whole country.

> Go, build your mighty State: its empire raise
> On base so firm it seems to mock Decay's ;
> Unite, annex, extend its borders wide,
> And boast it knows no boundaries but the tide
> Of two great seas, — but mark ! if in the chain
> Circling a land that spreads from main to main,
> One link you rivet, forged by mighty Wrong
> To choke the voice of Truth, and Freedom's song, —
> As in your fabric stone on stone you roll,
> If 'neath it you should crush ONE human soul, —
> Lo ! Samson-like, victorious at its death,
> While instinct still with its immortal breath,
> 'Twill overturn your pillared State, and all
> Its founders died to win be buried in its fall !

Mr. BABCOCK was followed by LAURA KENDRICK, of Boston, who was greeted with applause as she stepped upon the platform.

MR. PRESIDENT, LADIES AND GENTLEMEN:

I was present a few weeks ago at a meeting held by a body of eminent clergymen in the basement of Park Street Church to consider the best methods to employ in aiding the criminal class, whose members, according to statistics, were increasing every year. This fact proves beyond a doubt the existence of much that is radically wrong in our social system, the failure of the much-prayed-for regeneration, and the importance of right generation, and justifies the conclusion that we have had too little instruction in physiology and something too much Westminster Catechism; in short, that we need the counsel of intelligent men and women, physicians and scientists, in our efforts to improve our present condition. Strange to say, however, when a man of spotless reputation, a gentleman and scholar, embodies the result of deliberate study and sincere conviction upon the subject of Love and Marriage in pamphlet form, and gives it to the world, he is arrested, and confined in jail, for daring to think and express his thought. Vice, my friends, can never be legislated out of the world: our only remedy is education. When parents teach their children a proper reverence for their physical nature, and instruct them in all the relations growing out of its unfoldment, curiosity will give place to knowledge, and obscene pictures and literature will have no patrons. Every young man will treat every other man's mother, sister, and daughter with the same respect he would have accorded to his own.

Still, I am convinced that one of the chief incentives to Mr. Heywood's arrest is to be found in the fact that he has flung the gauntlet in the face of Usury, and waged incessant war against the encroachments of Capital upon the rights of the people. In view of Mr. Heywood's record as an abolitionist, it seems strange that none of his co-laborers in that struggle, save the veteran Parker Pillsbury, are represented, by letter or otherwise, upon the platform. The latter gentleman, like Mr. Heywood himself, refused to consider his work accomplished when the physical bondage of the black race was abolished, and determined to continue his efforts till mental and social freedom were attained. It was hoped that Wendell Phillips would have graced our platform, but, while admitting that the arrest of Mr. Heywood was an outrage, and counselling the committee to "go ahead," he, it seems, did not feel it to be his duty to come for-

ward in person. This is matter for regret. Mr. Phillips's reputation is too well established to have sustained injury; and he would have added another laurel to his crown of fame by entering his eloquent protest against this gross violation of freedom. It is worthy of note, however, that in this emergency the Liberals of New York hastened to send to our aid two of their representative men, Thaddeus B. Wakeman and Professor Rawson. It is to be hoped that, when the history of this eventful evening is written, Massachusetts will remember her obligations to New York. [Applause.]

Mr. President [turning to Hon. Elizur Wright], I would fain thank you, if language was not inadequate to the task, in the name of the women and mothers who are present to-night, for bringing the stainless record of your life, your white hairs and venerable presence, to add dignity to this platform and weight to our effort to secure for our sons the priceless boon of Free Speech.

To-night, gentlemen and ladies, the tidings of this meeting will be flashed across the wires, carrying solace, not only to the prisoner in Dedham Jail, but to Edward Truelove in an English prison, and encouragement to the tortured heart of Mrs. Annie Besant, bereft of her child by the verdict of a bigoted judge because she dared to plead for social and physical purity, and denounce with all the courage of her intrepid soul every form of superstition. Ay, the tidings will cross the Channel, and to the heart and brain of Victor Hugo, the friend of oppressed humanity, defender and eulogist of Voltaire, proclaim that Faneuil Hall is still the Cradle of Liberty. [Applause.]

The next speaker was Professor A. L. RAWSON, of New York, President of the National Defence Society, recently organized to protect the people from persecution by the "Society for the Suppression of Vice."

MR. PRESIDENT, LADIES, GENTLEMEN, CITIZENS:

It is somewhat difficult for me to select a part of this subject that has not already been discussed; but I will endeavor to entertain you a few moments, if you will give me your attention. The book of Job is a dramatic poem, in which Jehovah is the name given to the Supreme. Those who have not forgotten their Sunday-school lessons will remember how we are taught in that book the sublime doctrine that the good and evil of this life are not the result of chance or caprice; for Jehovah's care extends over all his creatures, restraining wrong, avenging the innocent.

In our day, Uncle Sam, as the supreme power in this nation of the United States, takes the place of the Jehovah of the people of whom Job wrote. Uncle Sam is our ideal of the supreme power of this country. Well, about a hundred years ago Uncle Sam called his children together in Philadelphia, and proposed to them a new contract by which they were to agree to protect each other in their lives, liberty, and pursuit of happiness. The boys were living scattered about on thirteen different farms, and had adopted many recent immigrants from Europe as help, and these came also to hear what Uncle Sam had to say. So, when they were all gathered around him, he spoke to them one by one, calling them by name, and reminding each of his antecedents, such as youthful capers, or a more serious hereditary tendency to mischief; and said that, for the sake of mutual protection and peace, one and all must agree to a common rule of action, just and equitable to each and all, protecting alike the weakest as the strongest, and all of every grade for the sake of the best. "Remember," said he, "that in Europe religious wars have devastated the land, brought ruin, famine, pestilence, and depopulation over once beautiful countries, because of difference in opinion in religious matters. For the sake of peace, then, we must avoid that evil here by agreeing to respect each other's private opinions." And they also agreed to make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press.

These laws, or contracts, were referred to the whole people, who voted on the question of accepting or rejecting them, and they were accepted. In my opinion, this is the only proper way of framing laws where a free people are governed by their consent; and it seems to me that our government will not be quite perfect until the laws that are enacted by Congress or the Legislatures of the several States are referred back to the people for their confirmation. When the people shall pass upon the laws that have been enacted by their representatives, then, and not till then, shall we have laws acceptable to the people. Under our present system, we are at the mercy of parties, of lobbies, and of any one who may have money and audacity enough to "push" a scheme through the legislative halls. In this manner was the so-called "Comstock act" of 1873 rushed through Congress and craftily sprung upon the people, and its victims have generally been as craftily lured to their doom ever since.

It is no part of my purpose to defend obscenity. That has nothing to do with our work to-night. My object is to insist that Mr. Heywood had the right of using a free press to advocate his private

opinions, and in his arrest and conviction that right has been invaded under a flimsy pretext. Mr. Heywood is a "free-thinker" and a "free-lover;" and, according to the Fourth Annual Report of the New York "Society for the Suppression of Vice," he "is in a fair way of being stamped out." Have you considered what that means? Stamped out! Why, is he not a citizen of the United States, and as much entitled to his rights as the publishers of that Fourth Annual Report? Why do they propose to break the contract their fathers made to respect each other's private opinions? And yet they have broken the contract in persecuting Mr. Heywood because he differs from them in religious conviction.

This is one of the reasons why. It is the natural tendency of the theological teaching of New England divines to lead men to violate their contracts. I do not now refer to such men as Mr. Tappan, the most recent instance, nor to any particular clergyman, either here or in Brooklyn; but it seems to me that such is the fact, and that this tendency to violate contracts has been growing during the last twenty-five years. The evidences are seen everywhere throughout society, and especially among those who make loud religious professions. This state of things ought not to be tolerated, and cannot be, if we expect to live together in peace under the Constitution and the laws which our fathers in their wisdom enacted; for these require that we should respect each other in our religious convictions.

Mr. Heywood has not been respected by his persecutors. He is respected by his neighbors and by all who know him, except only by his brother who differs from him in religious matters, and who forgets that there is no power in this country by which one man can force another to abandon or modify his beliefs, except the great force of public opinion. Before this we all bow, and before it we now bring for trial those who have violated their contract in arresting, trying, and sentencing Mr. Heywood.

The chief mover in this business is Mr. Anthony Comstock, and it will be useful to know a few things about him. I have met him, and made his acquaintance, and improved my knowledge of him by tracing his history upwards from about the age of ten years. His father is a good specimen of a Connecticut business man, who has had success in his day, but is now suffering the pressure of hard times with many others. His estimate of his son is worthy of our acceptance, since it is substantiated by the evidence of his friends and neighbors, and by his actions in public matters connected with his work as an informer. His father says he is conceited, proud,

vain, and revengeful. He is given to fits of ungovernable passion, and at such times indulges in language appropriate to the heat of his passion. I do not hold him to be altogether a bad man, and think he is sincere in his work, — as sincere as were the managers and tools of the Inquisition of the Catholic Church, who believed that by roasting one man they evangelized many others. So Comstock and his backers believe that by imprisoning one infidel they will convert many others. And they are correct, for they will convert them into united workers where they were before isolated thinkers.

I do not object to all that Comstock does. Much of the work he does is needed, in the suppression of obscene matter, pictures, or books; but even that is unfit and uncalled for in a Federal officer. The State laws are quite sufficient for all that kind of work, and there was little left for any one to do in 1873, when this law was enacted. But that is not his chief work. Look over the Report I have referred to before, and you will notice that only one class of our citizens is busy in this peculiar business of stamping out free-love and free-thought. I am not here to arraign the men who have lent their names as officers of that society, or whose names appear among its contributors, or are on its list of charter members. I will simply mention the head and tail pieces, the president and the secretary, and leave you to judge of the rest of them according to the old saying, "by the company they keep." Mr. Samuel Colgate, the president of the "Society for the Suppression of Vice," was complained of under this law for mailing a pamphlet in which vaseline is recommended as a means of preventing conception when combined with a certain other drug. Mr. Colgate pleaded ignorance of the contents of the pamphlet, and the court dismissed the complaint. It was not denied that the law had been broken, but it was claimed that it might be violated by the president of that society in a state of ignorance. Mr. Colgate has amassed a goodly fortune by attending to the details of his business, and it is surprising that, in so important a matter as the introduction of a new article of manufacture to the public, where the expense of printing and mailing pamphlets to every drug-dealer in the United States, and perhaps also Europe, would be many thousand dollars, he should suddenly become indifferent to its contents, and remain ignorant of what is said in recommending the use of the new article. This is not business-like; but it is a further corroboration of my statement as to the effect of the teachings of the theologians. So much for the president.

Of the secretary, a few words will be sufficient. I have examined his method of work, in general and in detail, and will give you the benefit of one instance. On the 6th of last June, he was introduced to the manager of a house of ill-fame in —— Green Street, New York, by an ex-convict who had been recently discharged from Sing Sing, after serving a seven years' term for stealing. The ex-convict said, by way of introduction, that four gentlemen from North Carolina, who had more money than brains, were in the city, and looking about to see the "elephant," and he thought if she allowed him to bring them to her house, she might make some money out of them. She consented; and Mr. Comstock, the thief, a friend of Mr. C.'s (probably Mr. Britton, "his man Friday"), and, as it is said, two members of the Young Men's Christian Association, made up a party of five. When, in the parlor and in the presence of the young ladies, Mr. C. proposed an exhibition of living statuary after the manner of the Three Graces. The preliminaries were agreed upon; and the price, which was $14.50, was paid over to the manager of the house, Mrs. Foster. While the preparation for the exhibition was going on upstairs, Mr. Comstock excused himself, saying he had an errand to do, and he would return in a few moments. He went out, and, as it afterwards appeared, swore out a warrant. The offence had not been committed when he obtained the warrant, and he must have deceived the court as to the facts. I am told, however, that detectives are allowed warrants for the arrest of those who are known or believed to be meditating or plotting a crime, so as to take them in the act. Mr. Comstock may come under that rule. Having hired the girls to break the law, he was reasonably sure they would do as they agreed. And they did, and were arrested after "the gentlemen from North Carolina" and their associate from Sing Sing had feasted their lecherous eyes to their hearts' content on the exhibition they had paid for. Such is the method of the secretary. He cannot plead the happy ignorance of the president, but he can plead that he is versed in the ways and means of trapping poor defenceless prostitutes, and dragging them down to lower depths of infamy. They are only women. Is he a man? [Applause.]

I have made inquiries about this matter of the captain of the police of the precinct including Green Street, of the sergeant, of the roundsmen, of the detective of the district, of the neighbors and rivals of Mrs. Foster in business in that section, and find that, without exception, all agree in saying that those girls were never known to have exhibited themselves in that manner before that occasion.

The house was never complained of for any cause, and the present manager has had it in charge a year and a half. Mr. Comstock was, therefore, accessory to the crime before the act, and was the chief instigator to it, using his money as a bribe. These poor girls are condemned to earn money as they can, and there are some pitying souls in New York who work in the interest of the Magdalen Asylum, who lend them a helping-hand to rescue them from themselves; but Mr. Comstock is not one of them: he is secretary to the New York "Society for the Suppression of Vice." I would recommend an addition to the title of the society, so that it should read, "Society for the Manufacture and Suppression of Vice," because that title would be more accurately descriptive of its character than the other. [Applause.] So much for the secretary. With such a president and such a secretary, is it any wonder that blunders are made? I have no doubt that, if inquiries are made, you will find Mr. Colgate just as ignorant of Comstock's method as he was of what was printed about the virtues of his vaseline, — no more, no less. And I am charitable enough to believe that the other gentlemen of the society are ignorant of the fact that their agent is associating with criminals, and, by their aid, bribing people to break the laws, to the end that business may be done under the auspices of their very unique society, which seems to have Ignorance in the presidential chair, Bigoted and Criminal Zeal in its secretary's pen, and Indifference in its board of management. After all, I do not condemn the legitimate object of the society, which was intended to do a needed work. But, when it turned aside from its proper work to attack a class of citizens who differed from it in opinion, it did violence to the common sense of the people, and forfeited the esteem of all good men. When I compare the two pamphlets, — the "Cupid's Yokes," for publishing which Mr. Heywood has been sent to prison, and the "Fourth Annual Report of the New York Society for the Suppression of Vice," — the one advocating what the writer believes to be a means of reform in social matters, and the other advocating a violation of our constitutional rights, — I am forced to the conclusion that the wrong party has been sent to prison.

The President announced that the Secretary would now read the resolutions prepared by the committee, and expressed the hope that they would be unanimously adopted as the solid sense of the meeting. The following resolutions were then read: —

BE IT RESOLVED, *by this meeting of citizens of the United States, in Faneuil Hall assembled:*

I. That the right to think and to publicly express, by tongue or pen, the results of thinking is the dearest right which American citizens possess; and to deny its exercise is subversive of natural justice, contrary to constitutional provision, dangerous to public welfare, and corrupting to public morals.

II. That no law ought to be permitted to remain upon our statute-books which is, by the absence of definition, capable of being used by designing knaves or narrow-minded bigots in denial of the exercise of this right.

III. That, since the recent conviction of Ezra H. Heywood, of Princeton, Massachusetts, nominally of having circulated obscene literature through the mails, but really of having published his sincere convictions on the subject of love and marriage, and his imprisonment in Dedham Jail for a period of two years, clearly make his case one of persecution of opinion under the law, meriting the severest reprobation of all right-minded persons, we call upon the President of the United States, in the name of the freedom of the press, and as he values the respect and confidence of the people whose servant he is, to release Mr. Heywood without delay.

IV. That Anthony Comstock, Special Agent of the Post Office Department, whose duty is to prosecute offenders against the United States law prohibiting the circulation of obscene literature through the mails, has shown himself, by his abuse of the power conferred upon him by the Government in repeatedly attempting to suppress free thought, free speech, and free press, and by the despicable and immoral methods which he habitually employs, unfit to be entrusted with the execution of any law seriously affecting the liberty of the citizen [applause and hisses]; and therefore we ask his immediate dismissal from the government service. [Great applause.]

V. That a copy of these resolutions be signed by the President and Secretaries of this meeting, and forwarded by the latter to the President of the United States.

The Secretary's motion for the passage of the resolutions being seconded by MOSES HULL, the vote was taken. The affirmative response was deafening, while less than half-a-dozen voices were heard in the negative. The President, after declaring the resolutions adopted, introduced MOSES

HULL, of Boston, for whom a portion of the audience had been loudly calling.* Mr. HULL spoke as follows: —

MR. PRESIDENT, LADIES AND GENTLEMEN:

When I look at the clock, and see how far the hands have turned since this meeting was called to order, and when I realize that you have been standing all the evening, it seems to me that you have been sufficiently crucified already; but I should neglect my duty to you, my duty to Faneuil Hall, my duty to this great republic, and last, though not by any means least, my duty to a fellow-mortal in prison, if I did not say a few words in reference to this great outrage.

"Tyranny, like hell," said a great writer, "is not easily conquered." This is freedom's trial hour. When the rights of a citizen can be ruthlessly violated and struck down, and that by a great so-called magnanimous government, and for no other reason than because such citizen, in a straightforward and manly way, writes his honest convictions, it is time for every true republican to tremble for the cause of freedom, and raise his voice against such an outrage.

It was my good fortune to be present at Mr. Heywood's trial; and, when the crier called the court, I heard him supplement the call with a prayer: "God save the Government of the United States!" If I ever felt to pray in my life, I felt to join in that prayer; but, when I watched that farce called a trial in the United States Court, — a farce worse than any I had ever seen enacted even in a pulpit, worse than has ever been enacted in a court-room since Jesus was tried before Pilate; when I saw a judge on the bench working harder against Mr. Heywood than I ever knew a paid attorney to work against a victim; when I heard the verdict of "guilty;" when I knew that Mr. Heywood was sentenced to two years' imprisonment at hard labor and to pay a fine of one hundred dollars; when I went to Dedham Jail, and saw Mr. Heywood there with his hair and whiskers trimmed; when I saw him with criminals, clad in prison uniform, — I felt to pray again; but my prayer was, "God damn the Government of the United States!" [Applause.]

In heaven's name, give us anarchy, give us bedlam, pandemonium, or the Commune, — any thing that will deliver honest people

* It was the intention of the officers of the meeting to have had the various letters of sympathy and encouragement that had been received read at this stage of the proceedings; but for this there was no time. The letters are given in the appendix to this report.

out of the hands of the mob called a government, which spends its strength in persecuting an individual for the expression of an honest opinion.

Ladies and gentlemen, I should not do my duty, unless I said a few words about this modern Torquemada, Anthony Comstock. One of the speakers has told us that Comstock is a praying man, — that he instituted prayer-meetings in the army. I wonder if, in his prayers, he ever thought of the prayer that Jesus taught his followers: "Lead us not into temptation." This hypocrite will make this prayer, and then arise from his knees, and go into a house where there are poor, starving girls, and with golden bribes hire these poor creatures to take their clothes off so that he can view them as he would a piece of statuary, and then arrest these helpless victims in that condition. Is not this doing evil that good may come? When I think of the poor, innocent Mr. Prosch, of New York, whom Anthony Comstock dragged through the streets in the winter, refusing him time to take off his apron and put on his coat or boots, I say, if this is the service of God, it is well to serve the other gentleman. When I think of the lies that Comstock told under oath in the Jones case and the Heywood case in this city, in addition to the falsehoods uttered by him in almost every other case where he has got his clutches on a victim, I want to see no more such specimens of Christianity. I have good authority for asserting that Comstock has said that he would never cease his labors until there was not an Infidel, a Liberal, or a Spiritualist paper left to tell the story. He boasts of having been the cause of the death of not less than fifteen persons.

When I trace out the life of this man, I honestly conclude that, if there is an endless hell, where the devil reigns because he is the greatest sinner that ever lived, — when Anthony goes to that place, his Satanic Majesty will arise, doff his hat, make his lowest bow, and say: "Mr. Comstock, you have beaten me; please take the chair." [Applause.]

At quarter to eleven o'clock, after a few remarks by Mr. HORACE SEAVER, of Boston, of which no report was made, the meeting was adjourned. Two of the advertised speakers, JOHN ORVIS, of Boston, and Dr. JOSEPH H. SWAIN, of California, were prevented from delivering their addresses by the lateness of the hour, much to the regret of the committee. It was agreed on all hands that the meeting was one of the most successful and effective that had ever been held in Faneuil Hall.

APPENDIX.

LETTER FROM ALFRED E. GILES.

HYDE PARK, Mass., July 29, 1878.

MR. BENJ. R. TUCKER:

DEAR SIR, — Very glad should I be, were I free to accept your invitation for next Thursday evening to appear as a vice-president at the Faneuil Hall meeting in Boston, called to consider the injury done to the freedom of the press by the recent sentence and imprisonment of Ezra H. Heywood. But my health is delicate, and it would be unwise for me to risk the fatigue of late hours and the excitement of the public meeting. You will please, therefore, to excuse me, and permit me to decline the proposed honor. I am glad, however, that you and others have in mind to do what you can to right the grievous wrong that has been done in Boston, specially to that honest, upright, conscientious, and courageous man, Mr. Heywood, and generally to the sacred cause of liberty.

You were present in court, and heard the informer, Anthony Comstock, there testify how, in last September, he assumed the fictitious name of "E. Edgewell," and beguiled Mr. Heywood to send to him at "Squan Village, N. J.," through the mails, Dr. Trall's treatise on "Sexual Physiology," and the pamphlet entitled "Cupid's Yokes;" and how afterwards, on the evening of November 2, he arrested Mr. Heywood in the hall in Boston where he was lecturing on social reform, and coerced him off to jail. At the trial, one of the questions was, whether or not "Cupid's Yokes" was an obscene publication. Comstock had sworn that such was its character. Mr. Heywood's lawyer contended that it was not obscene, but was of a useful and moral tendency. He called as witnesses to this view some eighteen or twenty persons, including editors and literary and professional gentlemen who had read the pamphlet, and were ready to testify that it was a moral, and not an obscene, publication; but the judge (Daniel Clark, of Manchester, N. H.) would not admit their testimony.

Not the whole — only scraps of the judge's instructions to the jury have been published. The little of it that I have seen does not appear to me to be sound law. I apprehend that he allowed his feelings to pervert his judgment. It may be more easy to decry obscenity than exactly and correctly to define it. Its vileness may be more in the soul that sees it than in the pamphlet or book which is condemned; and, if that be so, he that judges another unwittingly condemns himself. "The Index," one of the ablest and highest-toned papers in Boston, denounces, as "a most dangerous blow struck at the liberty of the press," and "a most monstrous

doctrine," Judge Clark's instructions that "a book, to be obscene, need not be obscene throughout the whole," but that "whole or in part comes within the meaning of the law." The editor argues that, under such rulings, the passages "offensive to decency" (for so the judge defined "obscene") in Shakspere, Milton, Byron, Moore, Burns, and even the Bible itself, would make the sender of them through the mail liable to fine and imprisonment. Influenced by the judge's instructions, the jury rendered a verdict to the effect that "Cupid's Yokes" was obscene, and that Mr. Heywood, who had sent a copy of it through the mail to Anthony Comstock, *alias* "E. Edgewell," in Squan Village, N. J., was guilty.

Not unlikely, if some other judge had instructed the jury, or if another jury had tried the case, the verdict would have been an acquittal. Judges learned in the law sometimes widely differ in their opinions of what is law. In the recent case of Bradlaugh and Besant, tried a year ago last June in England, the defendants were charged with having published an obscene book, entitled "The Fruits of Philosophy: an Essay on the Population Question," by Dr. Knowlton, and were found guilty and sentenced. But exceptions were taken; and though the Lord Chief Justice (Cockburn) of the Queen's Bench Division said, "It was no use to waste more time," and that his "impression was that these objections were mere cobwebs," yet, when the case was subsequently considered in the higher court (the Court of Appeal), the decision of the Queen's Bench Division was set aside, and Bradlaugh and Besant went free.

You and I are acquainted with Mr. Heywood. He is a graduate of Brown University in Providence, R. I., was a member of a Congregational church, an instructor of a Bible-class, and intended to become an Orthodox minister. But he read the works of Theodore Parker, and left the church, as he says, to save his soul. He became an opponent of slavery, and was a co-worker with Garrison and Phillips. He is a non-resistant, a labor reformer, a woman suffragist, and a temperance advocate. In behalf of all these reforms he has used his voice and pen, through the press and on the rostrum. Mr. Heywood is a scholar and a thinker. Like famous John Milton, who contended for unlicensed printing, and for soul-freedom in marriage and divorce, Mr. Heywood, too, has thought on these subjects. He has almost wept over the seas of troubles which toss the sexes, both in marriage and out of it. He has reflected on the crimes, cruelties, and sufferings generated by compelling parties who wished to separate to continue together in marriage relations. He sought for remedies to these evils. He had his theory. If it could not prevent, he imagined it might palliate, much conjugal misery.

> "To speak his thoughts is every freeman's right
> In peace and war, in council and in fight."

So he published "Cupid's Yokes." I have read the pamphlet. In my opinion, there is not an obscene word or expression in it from beginning

to end. Boston was once synonymous with Liberty; but now, alas! its fair fame is stained by the verdict in the Heywood case, — shockingly disgraced, as it appears to me, by the court's sentence upon him of two years' hard labor in jail, and a fine of one hundred dollars. How easily do men vested with authority and a life-tenure of office become oppressors! Such a sentence on such a man as Mr. Heywood is, if not atrocious, too severe. It reminds me of a Scroggs, a Jeffreys, a Benedict. When that upright and courageous free-thinker, Abner Kneeland, was convicted of blasphemy (it was the last trial of that offence in Massachusetts, as I hope Heywood's may be of obscenity), the court sentenced him to sixty days' imprisonment. His cell was carpeted, and he had constant leisure to receive and converse with his friends, who daily called upon him there with gifts and expressions of love and sympathy.

What was Mr. Heywood's crime? He sent through the mail a pamphlet which Anthony Comstock requested him to send. Nothing else. For doing that single action, the court award to him two years' hard labor in jail, and a fine of one hundred dollars. If Mr. Heywood had sent the pamphlet by express or by private conveyance, such an act on his part would have been no crime. But he sent it by mail. Its mode of conveyance, and that alone, rendered the act a crime. Mr. Heywood did not know or suspect that such an act was criminal. Anthony Comstock, suspecting and believing it to be wrong and prohibited by law, enticed Mr. Heywood to do the deed. What is the result? Innocent Mr. Heywood is sentenced to two years' hard labor in jail, and a fine of a hundred dollars; and his seducer, Anthony Comstock, is continued in office as a special agent of the Post Office Department (travelling at its cost all over the country), and as a salaried official of the New York "Society for the Suppression of Vice"! Which is the dishonest and immoral man? Which one perverts truth and corrupts morals, — Anthony Comstock or Ezra H. Heywood? A lie or a fraud perpetrated in behalf of morality or religion is just as truly a lie or a fraud as is one prompted by the Father of lies, and has the same parentage. An ancient heathen said: —

> "Who dares think one thing and another tell,
> My heart detests him as the gates of hell!"

I consider him a purer man and a better moralist than the modern New York agent for suppressing vice.

But it is said that "Cupid's Yokes" is an obscene pamphlet, and that the court so adjudicated it. I answer, that Mr. Heywood did not know it to be such when he sent it; nor at the present time do I, or hundreds of intelligent men and women who have read it, consider it to be obscene; nor do we regard the judgment of the court as decisive of the question. Courts sometimes err. A Jewish court decided that Jesus was a blasphemer, and crucified him; a Greek court, that Socrates was a corrupter of youth, and poisoned him; a Roman court, that Galileo was a heretic, and racked him; an English court, that Bunyan was a non-conformist,

and imprisoned him; an American court, that Heywood sent an obscene pamphlet in the mail, and imprisons him in jail at hard labor for two years, with a fine of one hundred dollars. Unrighteous judgments of courts disgrace their authors, not their victims. It is sorrowful that errors occur, either on the bench or in the dock; but which is more lamentable: the alleged blasphemies of Jesus or the sentence of his judges? the teachings of Socrates or the sentence of his judges? the speculations of Galileo or the sentence of his judges? the non-conformity of Bunyan or the sentence of his judges? the deed of Heywood or the sentence of his judges?

Some people think that the sale and circulation of "Cupid's Yokes" are now prohibited by law. Such is by no means the truth. For aught that yet appears, it may be lawfully sold and circulated, possibly even through the mail. The verdict in the Heywood case does not decide that matter. In the very next trial in which the question of its obscenity arises, the jury, better instructed, may decide, as many readers of it have already decided, that "Cupid's Yokes" is not obscene, — nay, even be of the opinion that it is promotive of personal virtue and social morality. Then which will be the right and final decision, — the verdict of the first, or the verdict of the next jury? In every case which hereafter may arise, the jury will form its own opinion, and render its own verdict, uncontrolled by the verdict and judgment already given in the Heywood case.

But why a difference of opinion on the question of its obscenity? You remember the old adage, *Medico et philosopho nihil indecens;* that is, Nothing is indecent or obscene to a physician or a philosopher. An alleged obscene book, picture, or object does not beget impure thoughts in the mind of every beholder. Whether or not such emotions arise depends on the wisdom and purity of his own soul. Refined and cultivated ladies and gentlemen now daily visit picture and statuary galleries. They there see only images of beauty and forms of loveliness, where a Comstock, looking at the same objects, might see naught but shamelessness and obscenity. Even in Comstock's repertory of curiosities, which he reserves for his friends, or exhibits when he is soliciting money contributions, a thoughtful and benevolent person might see mainly evidences of special misdirection and excessive reaction, necessarily produced in vulgar and ignorant minds by the false modesty, the emasculated morality, and mawkish prudery of modern civilization. If the soul is pure, all is pure. If the eye of the beholder is evil, he is full of darkness, and great is that darkness.

As in former times, so now there are those who make clean the outside of the cup and of the platter, but in their inward parts are full of ravening and wickedness, of extortion and excess. Outwardly they appear righteous unto men, but within are full of hypocrisy and iniquity. They profess admiration for innocence and purity. They stigmatize and prosecute, as obscene, treatises on "Sexual Physiology," and pamphlets on the "Binding Forces of Conjugal Life" (that is, "Cupid's Yokes"). They

prohibit or restrict inquiries into matters of marriage and divorce, parentage and children, and the right relations of the sexes. They say they wish for purity and innocence in sexual matters; but it is a purity and innocence born of ignorance, and consequently is a false purity and a false innocence. They are blind and ignorant guides, and would keep the people blind and ignorant. The Constitution of Massachusetts (Part II. chap. v. sect. 11) recognizes "knowledge, diffused generally among the body of the people," as "being necessary for the preservation of their rights and liberties." It does not specify the kind or limit the amount of knowledge. It therefore embraces all knowledge, including that of human reproduction, the association of the sexes, and the improvement of the human species. Complete, exact, and scientific knowledge cannot be attained without wide observation and many inquiries, theories, and experiments. The investigators and pioneers of progress in sexual matters also desire purity and innocence; but it is a purity and innocence born of knowledge, not of ignorance.

New ideas are strange, sometimes startling. Self-conceited persons who believe that they already know the whole of any matter which may be at issue are not unfrequently the most startled by, and the most hostile to, new theories. Among certain barbarous people formerly a stranger (*hostis*) was an enemy. Now, in England and the United States, pioneers and explorers on the great question, "What is the scientific law for the best association of the sexes?" — a problem yet shrouded in darkness, and one than which none more important concerns humanity, — are treated as public enemies, and subjected to fines and imprisonment! When locomotives were first run on railroads, it was not uncommon for horses to be startled and frightened by the novel, noisy, smoking, fiery engines. Sometimes sad accidents occurred. Which was the better course to prevent them, — to prohibit the running of the locomotives, or to train the horses to get rid of their fears and to conquer their prejudices? So now, in the matter under discussion, let children, judges, and people be educated, not authors harassed, fined, and imprisoned.

Judge Clark instructed the jury in the Heywood case (see "Boston Daily Globe," January 19, 1878) that they were to consider what might be the effect of such books as Trall's "Sexual Physiology" and "Cupid's Yokes" upon families where they might be brought in; that they had no right to make any comparison of them with the Bible, or other books which had been named by Mr. Heywood's counsel as containing immodest passages; and he also "quoted two paragraphs from one of the books, and asked the jury what could be more indecent than those." It may be answered, (1) that the effect of such books in thoughtful families desirous of information on the subjects therein treated of would be to provoke thought, knowledge, and wisdom, and perhaps to reform bad habits; and therefore on such families the effect would be salutary: in ignorant and unfortunate families, these books, like some publications of the American Tract Society, which are said to have sometimes produced

insanity among their readers, might occasionally produce unhappy consequences, not foreseen nor contemplated by their authors: not the books, then, would I condemn, but rather commiserate the unfortunate minds of their readers. (2) The judge's instruction that "the jury had no right to make any comparisons," I believe not to be law, but a misdirection. The jury, in passing on the questions before them, had the right, I think, to recall to mind so much of their previous knowledge, whether from the Bible or otherwise, as they could remember, and to compare the decency and morality of the books before them, even of the paragraphs read to them by his Honor, with that of the Bible or any other books or other standards from which they had derived their notions and opinions of decency and indecency, of morality or immorality. (3) The question of the judge to the jury, "What could be more indecent" than the two paragraphs he quoted to them from one of the books? is, in my opinion, plainly unjudicial. The direct tendency of the question, under the circumstances, was to vilify the book, and to prejudice the jury against Mr. Heywood. So far as he could, he infused his personal abhorrence of the book into the minds of the jury.

He whose judicial duty it was to have acted impartially, and to have weighed in an even balance the case before him, put his intense prejudices, words, and feelings into the scale, and sided with Anthony Comstock to convict, and consign to a felon's cell, a scholar, a thinker, a conscientious reformer, one of the most honest and upright men in Massachusetts. It is a sham morality which shuns knowledge and argument, and which needs deceit, injustice, and oppression for its support, and is not worth preserving. I advocate honesty, truthfulness, the right of free inquiry, — not the special theories contained in "Cupid's Yokes." Court and jury now condemn them; but it has sometimes so happened (it is marvellous in our eyes) that the stone which the builders rejected has become the head of the corner.

The Comstock statutes are an instance of hasty legislation, and would not, as I believe, be sustained by any Congressman who had ever once carefully examined them, and thoughtfully read John Milton's "Speech to the Parliament of England for the Liberty of Unlicensed Printing." "Wherefore," inquires Milton, "did God create passions within us, pleasures around us, but that these, rightly tempered, are the very ingredients of virtue? They are not skilful considerers of human things who imagine to remove sin by removing the matter of sin." "Banish all objects of lust, shut up all youth into the severest discipline that can be exercised in any hermitage, ye cannot make them chaste that came not thither so." "Suppose we could expel sin by this means," "so much we expel of virtue." "Why should we then affect a rigor contrary to the manner of God and of Nature by abridging or scanting those means which books, freely permitted, are both to the trial of virtue and the exercise of truth. It would be better done to learn that the law must needs be frivolous which goes to restrain things uncertainly, and yet equally,

working to good and to evil. And were I the chooser, a dram of well-doing should be preferred before many times as much the forcible hindrance of evil-doing. For God sure esteems the growth and completing of one virtuous person more than the restraint of ten vicious." Oh! in an age so afflicted as is our own with cant and hypocrisy, it is refreshing to read honest, wise, and brave words like these from Milton.

I advocate toleration and equal rights in the public mails for all letters, papers, pamphlets, and publications. Under a political constitution of equal rights and the blessings of liberty for all people, it is a necessary and logical sequence. Sinners and so-called bad and ignorant people are as much entitled to the use of the mails, if they pay for them, as are saints and so-called good and educated people. I think that publicans, humanitarians, and free-thinkers have the same right to express and to mail their thoughts and publications as have pharisees, bigots, and church-bound souls. It is as unwise and as unjust for Congress to discriminate and legislate on the morality or immorality of mail-matter as it would be to do so on its political complexion. Opinions differ on morality and immorality, on obscenity and purity; and this is true even of the same person at different periods of his life. My own experience illustrates it. When a youth, I joined an evangelical church, and for twenty-five years remained a conscientious member in good and regular standing. I was an original member and an officer of the Young Men's Christian Association in Boston, and believed in their general views and principles. But the growth of years has, I believe, brought some increase of knowledge. It certainly has enlarged my ideas of toleration and charity. Now, though I believe that some, if not many, of the publications issued by the American Tract and other professedly religious societies are corruptive of public and personal morality, and are promotive of untruthfulness, dishonesty, strife, uncharity, and cruelty among their readers, yet I would not restrain them from free and equal passage with all other publications, good or bad, wheat or tares, in the public mails. Least of all, would I employ or assist to pay a cheat and a liar for his services in harassing their authors, and decoying them into violations of law.

I have heard (but I have not investigated the point) that a glaring defect and injustice in the administration of the so-called Comstock statutes is, that the misdirections and comments of the judge, even when clearly wrong, cannot readily be carried to a higher court. If this be so, it throws light on the success that has hitherto attended Comstock's prosecutions.

The heritage of free thought and a free press is too precious to be lost without remonstrance. Heywood is a martyr, as I believe, to unwise legislation and judicial usurpation. It is a sad day when a good man pines in jail, and a notorious trickster thrives in office. I hope that you and your Faneuil Hall associates will nobly vindicate the rights of Heywood and the people against all oppressors.

Thanking you for the courtesy of your invitation, I remain sincerely

yours for Truth and Honesty, for Free Inquiry, a Free Press, a Free Mail, and for the extirpation of the Comstock excrescences, roots and fibres, from the United States statutes, ALFRED E. GILES.

LETTER FROM THERON C. LELAND.

NEW YORK, July 29, 1878.

BENJ. R. TUCKER, Esq.:

DEAR SIR, — Government by the grace of God dies hard. The Church parts from the State with pangs of pain and amid tears of regret. The just administration of the affairs and relations of equal men, by their own agents, freely chosen, and for their own impartial good, makes its way, even in this day of enlightenment, only by vigilance, persistence, and a struggle. The trail of the serpent is even yet over us all, though some of us hoped his head had been bruised under Democratic heels past reconstruction. The Devil Fish of ecclesiasticism still lurks in the deep recesses of our freest institutions, and from time to time his repulsive, far-reaching tentacles, sucker-armed, feeling among and fooling around free and independent citizens, fasten on an unwary victim, and draw him under. "One morn we miss him from his 'customed hill;" and, on looking for him, we find the mangled remains of him in the fangs of this old, old monster, which the blood and bones of so many martyrs for long ages have nourished.

This imprisonment of Heywood is an outrage on human freedom, on liberty of conscience, on the right of private judgment concerning religion and morals; and it is an outrage the same in kind, and well on toward the same in degree, as the tortures inflicted on heretics by agents of the Inquisition. Heywood has invaded no human rights, nor harmed any individual; and this punishment of him for his published opinions is the work of the Christian Church, in spiteful revenge for outspoken dissent from her works and ways. The State has played only the subordinate part of tool and accessory in the business.

The Church is responsible for Comstock. He is her agent. He does her bidding, and earns the salary which she pays; and her clergymen rush to his defence when he falls into difficulty, or gets criticised in the newspapers. The Church owns Comstock, and he runs the United States courts. It may as well be understood first as last, a new struggle has started for ecclesiastical supremacy in the State. Democratic as she is, there is a missing ingredient. Restore the Priest and the Censor, and government will run beautifully once more — on the despotic model. This is the new demand; let the American people act accordingly.

The attack on the people for the capture of the State is made in two lines and from two directions. One is the direct effort to amend the Constitution, placing God and the Bible in terms in its text and under its

protection. The other is this sapping and mining movement, without the knowledge or consent of the people, to clandestinely alter and amend our laws so as to make natural morality immoral and punishable at law. Nobody is deceived by the word "obscenity," under which they operate. Nothing is so easy as to choose an odious word, and set all the region kites to hawking it. Obscenity, on the definition of these buzzards, is the commonest, and usually the most innocent, thing in the world. Man is totally depraved; and sex itself is obscenity. For the rank depravity of running this vast department of sex down through the centre of animated nature, the Great Creator is himself the Arch Obscenist.

He made man, they tell us, and was ashamed of him; then, to rectify that error, he made woman, and she was ashamed of him; and they were all ashamed of each other, and have been ever since. Indeed, they have been ashamed for so many ages, shame on shame, century after century, that they are getting used to it, and even beginning to feel best when they are ashamed. In fact, it is dawning on advanced thinkers, students of science, and on the minds of sensible men and women generally, that sex is not total depravity, nor a disastrous mistake on the part of the Creator.

He who asserts that all men are rascals convicts at least one; and they whose creed is total depravity, and who protest that all sex is vile, plead guilty as to themselves.

But, in the worst view that can be taken of sex manifestations, in a world where sex is everywhere present, obscenity, as the sex-phobists define it, is the commonest sin there is going. It is as universal as Sabbath-breaking, or lying, or taking sacred names in vain. It runs, like a sauce for relish, through the very best of our classic literature, and I am afraid there may be found a tinge of it even in Holy Writ. Of course, a Creator who would be guilty of instituting sex anyway in such an otherwise beautiful world as this wouldn't hesitate to talk about it in his most inspired Word.

But, aside from Biblical literature, where you will find obscenity in its immaculate purity, send your sons or your daughters to any of our libraries, or to any bookseller, and they can procure such works as Rabelais, or Montaigne's Essays, and can send them through the United States mail. But you can find in these classic works, especially in Montaigne, pages on pages that Mr. Heywood never would have dared to print, or at least not while Comstock is at the crank of the moral universe.

There is obscenity also outside of books. Indeed, the real simon-pure article is almost wholly "out of print," — living, moving, enacted obscenity, that you cannot estimate by "tons," nor transport by mail, nor buy at a print-shop, but that runs by forty-thousand-hogshead-bunghole-power, while Comstock is saving away at a miserly rate at his goose-quill spigot. In every city, there are whole classes — I need not name them — thousands of women, and tens of thousands of counterparting men — wholly given over to professional and irrepressible indulgence in obscene devotions. This is a flood-gate which the Comstock crowd make no effort to shut down.

Another great source of obscenity is our law courts. There runs, day after day and year after year, a steady stream of connubial revelations, in language not often heard elsewhere even by ears impolite; and reports of even the worst of divorce and other cases get published in all their broadness in the great daily journals, and sent, without let or hindrance from the Comstock laws, through the United States mail. Yet Heywood is in prison for publishing a little pamphlet on the right relations of the sexes, or rather is punished for sending it through the mails.

Still another wide field for the growth of so-called obscenity is furnished by our habits of surf-bathing along a thousand miles of sea-coast. There is one wide waste of abandoned display, which, though perfectly innocent and harmless, yet comes within the unclean definition of these public prosecutors of authors and editors.

Obscenity, then, has wide or narrow limits, just according to the bigot who scrimps his pattern of virtue, or the student of Nature who scants the domain of vice. Either has a right to live and express his views, but neither has the right to invade or repress the other. Let them both struggle for it in the world of opinion, as the contending disputants over other opinions have had to do, down to the Comstock era. No danger whatever but that the fittest will survive. But it is a certain sign that that is what the unfittest is afraid of, when he appeals to the State to import prosecutions at law, fines, and prisons into the contest. Evolution will certainly and remorselessly squelch the recreants who employ these agencies of force to instil a tenet of religion or a principle of morals. That policy is a confession of judgment at once, and the verdict of the American people will be promptly rendered.

You see, then, from this brief survey of the various sources and branchings of obscenity what a vast ocean of it rolls all around us. You see how ever present and unescapable it is. And yet a United States judge, in the full blaze of this enlightened day and of the guarantees of the Constitution, scoops up a thimbleful out of this great ocean, of what he is told is the genuine article, imprisons a Massachusetts citizen for it, and thinks he is doing society a Herculean service; and all the while that this trial and imprisonment are going on thousands of pious and willing wallowers up to their necks in real obscenity go free. Why, the very latest performance of this emissary from New York and Brooklyn churches, raiding into Massachusetts to prosecute her citizens for obscenity, is an evening spent with a Green Street procuress, whom he induced to send out and invite in a troop of the girls of the neighborhood. These he hired with money to divest themselves of all but their smiles before him and his gang, and to parade and dance before him as so many Flora McFlimseys with "nothing to wear." Then, after an evening of pleasant pastime in the society of these ladies, so congenial to his tastes and character, he turned upon them with warrants of arrest for obscenity, and marched them to the Tombs!

These are the regular tactics of this obscene agent. These are his

detective methods. This is his regulation style of doing evil that good may come; and this is the kind of proceeding that is backed up, defended, pleaded for by prominent clergymen of New York and Brooklyn. And this is the discreet and discriminating kind of suppression of vice that United States Judges are lending themselves to support. Is it possible that, at this late day, after a hundred years of freedom, they flatter themselves that the exercise of their little, brief authority will stop discussion? Where was Judge Clark brought up? Is he an American citizen? Runs there no drop of Revolutionary blood in his veins to inspire him with some small promptings from the Spirit of Liberty? Under what despotism was he spawned, that he supposes American citizens, American writers, and American editors can be gagged? Or if, to no patriotic purpose, he *was* born in this American Union, to what tyrant in the Old World does his "life-blood track its parent lake," predisposing him to the wild and guilty phantasy that the free and equal citizens of the Republic of Washington and Jefferson, Adams and Patrick Henry, will be deterred by atrocious charges to juries, or by United States prisons, from discussing any subject they choose, or from publishing their opinions upon it in any terms that they choose, or from claiming and obtaining their rights under the Constitution to transport their published opinions equally with the opinions of any other citizens in the United States mail? Most sincerely yours,

THERON C. LELAND.

LETTER FROM PARKER PILLSBURY.

CHICAGO, Illinois, July 25, 1878.

MY DEAR FRIEND TUCKER:

I have your note before me, inviting me to attend a meeting at Faneuil Hall on the first of August, called in vindication of the freedom of speech and freedom of the press.

The place is well chosen. Faneuil Hall: hallowed by ten thousand Revolutionary memories and associations! Faneuil Hall: whose walls have so often shuddered with the eloquence of the worshippers of freedom and independence, from the period of the early Adamses and James Otis and General Warren, to this later time of Theodore Parker, Charles Sumner, and Wendell Phillips.

Yes, sir, the place is well chosen; and so is the time. First of August: fortieth anniversary of the final, peaceful abolition of slavery in the British West India Islands. We American Abolitionists for many years celebrated that day, — kept it holy as a Hebrew Sabbath, — in commemoration of deliverance from worse bondage than Egypt ever inflicted or the tribes of Israel ever suffered!

Now, we do not even celebrate our own Emancipation Day. One reason is, Slavery is not yet abolished in our country. Never was. To save

the Nationality, *as a forlorn hope*, the government unyoked the slaves reluctantly, and armed thousands of them, and sent them down to the forefront of the battle (murderously as did King David send Uriah, whose wife he most adulterously coveted), and through the blood of those slaves *we* are saved. We, not they. By their stripes was our stricken Union saved.

No wonder the Abolitionists do not observe our Day of Deliverance! That day was a thousand times more our shame than our glory. And the Abolitionists never rebuked the government for its *meanness* in what it did towards the slaves. They magnified its meanness into magnanimity instead. Wait, and see what comes of it. The gods are never mocked with impunity.

The virtue of Calvary's victim set his cross on fire, to shine a beacon-light to millions, past, present, and to come.

Nor shall one drop of the blood of Charles Turner Torrey, Elijah Parish Lovejoy, nor John Brown be lost. It shall be part of our salvation, if the nation is ever saved.

And now, to like good purpose and result, Judge Clifford has shut Ezra H. Heywood in prison for two years! It is his first bid for the Presidency. He will bid higher next time. And so no man, no woman of us, is safe. In spirit I shall be with you, at Faneuil Hall, for every good word and work. PARKER PILLSBURY.

LETTER FROM A. J. GROVER.

No. 133 DREXEL BOULEVARD, CHICAGO, July 28, 1878.

B. R. TUCKER, Esq., Cambridge, Mass.:

DEAR SIR, — I wish to add my word of protest, humble as it will be, to the strong utterances which I know will be heard in Faneuil Hall on the first of August, against the outrage upon law, liberty, and the rights of man, committed by the Federal Courts in the trial, conviction, and sentence of E. H. Heywood.

I have carefully read and reread the pamphlet which constitutes his alleged offence. I have also submitted it to a score of gentlemen and ladies of culture and refinement, — among them lawyers of eminence, ladies of the highest standing in society, and Orthodox clergymen second to none in ability and influence, who have no sympathy with the social views of Mr. Heywood, — who pronounce the conviction of Mr. Heywood upon the charge of "indecency" or "obscenity" for writing or publishing such a book an outrage upon law and republican liberty, as guaranteed by the Federal Constitution, which ought to startle the nation.

Here in the West, among lawyers, this law against obscenity, as it stands on the statute-book, and as construed by Judge Clifford, is regarded as palpably unconstitutional. The people of the West regard it as the

fruit of a conspiracy of sixteenth-century zealots and bigots in the Church to reinaugurate the principle of interference with the freedom of the press, in the Church's behalf, under the *fraudulent pretence of suppressing obscenity*, with the ultimate object in view of uniting Church and State by a change in the Constitution, already proposed by the Edmunds amendment. Tyranny never subverts liberty at a blow or by direct means: the public mind must be made familiar with the aims of tyrants by slow degrees, and under disguises which conceal the end sought. The "obscenity law," with Anthony Comstock, is the small end of the wedge; the union of Church and State and a constitutional religion is the big end; and the wedge will be driven home, unless the ancient spirit of liberty is invoked in time to save the republic. It is meet that the first utterance should come from the Cradle of Liberty, from Faneuil Hall. Judges aspire to be presidents; ambition taints the ermine, and renders our judiciary venal. This is at present our greatest danger. Shall we hear the voice of Phillips on this point from old Faneuil Hall?

Not having been invited, and being a stranger to your Committee, I write this note at the suggestion and request of Parker Pillsbury (at present my guest), whose prophetic utterances have so often warned the people of dangers in the past, and who has never been more worthy of being heard and heeded than now in the fulness of his years, when the wisdom of "three-score and ten" has crowned him.

Very truly, &c. A. J. GROVER.

LETTER FROM D. M. BENNETT.

TRUTH SEEKER OFFICE, July 31, 1878.

TO THE CHAIRMAN OF THE FANEUIL HALL MEETING:

DEAR SIR, — I would be very glad to be with you, and to listen to the expressions of earnest souls against the encroachments of bigotry and tyranny, but my duties here require that I should remain at home. Allow me to tender my warmest sympathies in the cause of mental and personal freedom in which you are engaged. I bid you godspeed in the good work, and hope and trust that by your combined protests you may give those to understand who would cripple and destroy the principle of individual rights and personal liberty that they cannot succeed in the unjust course they have begun. These are dear to every true American, and to deprive him of them is one of the greatest pieces of robbery that can be perpetrated.

It is utterly opposed to the spirit and genius of our institutions for one set of men to dictate to other sets of men what shall be their opinions upon matters political, theological, social, or moral; and let us defend to our latest breath those inherent rights against the attacks of open and insidious foes. Every man must have the undisputed right to form his

own opinions, to mark out his own line of principles, to publish and express them in his own language, and to be equal in the facilities of the postal service. Every individual, whether learned or unlearned, high or low, rich or poor, refined or unrefined, cultured or uncultured, orthodox or heterodox, moral or immoral, has equal rights to use the facilities of our government, in its various departments, with any other citizens, and this privilege and right let us fight for to the last. Let us protest against the postal service ever being subverted to the behests or in the interests of bigotry and intolerance. Please assure all the assembled friends that I am with them in spirit.

Fraternally, D. M. BENNETT.